

# The Collection of Hindu Law Texts

Volume II. Part IV.

## YÂJNAVALKYA SMRTI

WITH THE COMMENTARIES

OF

(1) The MITÂKṢHARÂ by Vijñāneśvara Bhikṣhu

(2) The VĪRANITRODAYA by Mītramisra

AND

(3) The DĪPAKALIKÂ by Sūlapāṇi

Vyawahâradhyâya.

Chapters VIII-XXV (Pages 978-1380)

*An English Translation with notes, explanations etc*

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## NOTE

The Chapter which now follows *i.e.*, the VIII—deals with the Laws of Partition and Inheritance and topics cognate to these. Mr. Colebrooke selected this portion from the *Mitākshara* of Vyāñeswara and presented it along with his translations of similar portions from other works describing the whole collection as “Standard Hindu Law Books.” In fact, what is known and referred to as Colebrooke’s *Mitākshara* or simply the *Mitāksharā* in judicial decisions generally is this “Extract from the *Mitāksharā* composing so much of its work as relates to Inheritance.”

Having regard to the length of the period for which Colebrooke’s translation has been in use and relied upon as an authority, and having regard to its excellence as a translation which has thus acquired a high authority as a work of reference, special care has been taken in the following pages not to disturb the spirit and generally even the letter, of Colebrooke’s translation, unless a departure was found to be necessary, in which case the differences are explained in the notes below the line.

Another point to be noted is the division into Chapters, Sections and Paragraphs noticeable in Colebrooke’s translation. There is no such division in the original work. It will be remembered that the *Mitāksharā* is a running commentary written by Śrī Vyāñeswara on the *Smṛti* of Yājñavalkya. Vyāñeswara takes the verses of Yājñavalkya and appends his gloss thereto, and the English Translation of the First Book and the first seven Chapters of the Second Book of this work published in these “Collections” has closely followed the method adopted by Vyāñeswara so that the translation appearing in this Series presents an exact resemblance of the original text as it is. The same method is continued in the following Chapters. However, for facility of comparison and reference, the divisions made by

Colebrooke are indicated by black figures in the body of the translation, and the portion covered in each page is also indicated in brackets at the top. It is, however, necessary that the text is appreciated in its original form from which this division into Chapters, Sections and Paragraphs appears to have been made by Colebrooke probably for convenience of reference. For it has led at times to serious consequences in that some of the judgments of the Courts appear to have been influenced by this division. Indeed, some of the *placitâ* in Colebrooke's translation have been treated as *verses*, giving an impression that the portion under reference represented *verses* in the original *Smṛti*.

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## NOTE TO ABBREVIATIONS.

Collections —	Stands for	—	"The Collections of Hindu Law Texts"
			as published in this Series.
Collections Sk	" "	—	Collections Sanskrit texts.
Manu —	" "	—	Manu-Smṛiti as published in the Sacred Books of the East Series, Vol. XXV and this Series.
Nārada —	" "	—	Published by Dr. Jolly, S. B. E. Series Vol. XXXIII.
Bṛhaspati —	" "	—	Published by Dr. Jolly, S. B. E. Series Vol. XXXIII.
Gautama —	" "	—	Ānandāśrama Series No. 61.
Āpastamba —	" "	—	Sacred Books of the East Series.
Vasiṣṭha —	" "	—	Sacred Books of the East Series and the Bombay Sanskrit Series.
Kātyāyana —	" "	—	Quotations from Kātyāyana Compiled by Mr. P. V. Kane
Jaimini —	" "	—	The Sūtras of Jaimini, as published in the Ānandāśrama Series No. 54.
Bandhāyana —	" "	—	Sacred Books of the East Series and the Mysore Sanskrit Series.

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(Colebrooke Ch I Sect I, pp 13)

## CHAPTER VIII.

\*PAGE 73. On the Distribution of Dāya

(1) Evidence, human and divine, has been severally explained. The distribution of Dīya<sup>1</sup> is now being propounded by the Yogamūrti.<sup>2</sup>

(2) Here the term *Dāya* signifies that wealth<sup>3</sup> which becomes the property of another solely by reason of his relation<sup>4</sup> to the owner. (3) It is of two sorts Unobstructible<sup>5</sup> and obstructible Here the wealth of the father as also

1 The term दाया "*Dāya*" has been translated by Mr Colebrooke as "Inheritance" and the expression (व्यवसाय) "*Dāya Vyāsāya*" as "Partition of heritage" With a view to avoid confusion, the original word *Dāya* has been kept as such It will be seen that this chapter treats of the Law of Partition as well as of Inheritance, and in both cases the thing that is partitioned or inherited is termed *Dāya* Of the various meanings which this word has in Sanskrit the two which are appropriate and call for special attention here are "a share or portion," and "Inheritance or patrimony" See *Krishna vs Sams* 9 Mad 60

In the next sentence the Author explains the term *Dāya* to be "that wealth which becomes the property of another, solely by reason of relation to the owner" And this means that 'wealth' which becomes the property of another, in the right of the relation of offspring and parent or the like, which he bears to his father or other relative who is the owner of the wealth, is signified by the term "*Dāya*" [ see *Subodhas* p 42 ll 30-33 ] thus leading to the distinction of the अव्यवसाय and व्यवसाय दाया

Another term which deserves special attention equally with the term *Dāya* is the word (विभाग) *Vibhāga* It is found to have been translated as "partition". The better translation however would be "Distribution" as this word would cover the cases both of Partition and of Inheritance

This passage has been referred to in a number of cases See particularly *Ganika Vignatila vs Bai Jalab* 24 Bom 122

2 Yoga mūrti, the 'contemplation itself', the image of holiness & the sage Jāyanti m

3 Wealth—the original word is वस्तु It includes all kinds of property and is not necessarily confined to money As contrasted with the wordy 'land,' it may mean movables 'Estate' is comprehensive

4 Here the word सम्बन्ध 'relation' is confined to and indicative of relation by family connection See *Janda Koor vs Shes Pershad* 17 Cal 575, 78

5 Colebrooke translates as "unobstructed" The original is अशङ्क्य *ashāṅky* *banthā* that which is not liable to obstruction See § 274 *Mayer & Hindu Law* It is that estate in which the future heir has a vested interest by the mere fact of his existence See observations of Chaudharykar J in *Bai Persad vs Bai Somli* 38 Bom 424

Definition of Un-  
obstructible and  
Obstructible *Dāya*

of the (paternal) grandfather becomes the pro-  
perty of his sons or grandsons, in the right of their  
being his sons and grandsons respectively and  
thus (this) is an inheritance not liable to obstruct

- 5 101 But property devolves on (paternal)<sup>1</sup> uncle, brothers and  
the rest, (but only) in the absence of the male issue and of the owner,  
and thus the existence of a son, and the existence of the owner are  
impediments<sup>2</sup> (to the devolution); and as it is (only) in the absence  
of these<sup>3</sup> that the property devolves upon those in their capacity  
10 as uncle and brother (respectively), this is an inheritance subject to  
obstruction. The same should be understood in respect of their sons  
and the rest

- (4) Partition<sup>4</sup> (*Īśhāṅga*) is the adjustment of diverse rights  
15 regarding property held collectively by assigning severally (to indi-  
viduals) particular portions of the aggregate. (5) Entertaining the  
same opinions it has been said by Narada<sup>5</sup> "Where a partition of"  
the paternal estate is instituted<sup>6</sup> by the sons, it is called by the  
'learned Partition of *Dāya* (heritage)—a title at law' 'Paternal'

1 This translation is in accordance with the reading adopted in the text  
of the "Collections" vs विपुलप्राप्तिनाम्. The other reading is विपुलप्राप्तिनाम् which  
appears to have been before Mr Colebrooke when he published his translation.

2 *Pratibandhah*—

पुत्रस्यैव स्वामित्वस्य अविच्छेदः —The existence of the son, and also of the owner,  
are the obstructions. It should be noted that this element of non vesting dis-  
tinguishes it from the *व्यतिथि* in which the interest being vested the existence of  
these two or others do not work as impediments. The right of representation is  
always given effect to, with the result that the interest of persons in lineal order is  
unaffected, and is therefore unobstructed. See *Subodham* also I 421 31

3 i. e. the male issue and the owner

4 Compare with this *Īśamrādāya* (I 1000 II, 6-10) सप्तपुत्रस्यैव सप्तः ॥  
विपुलप्राप्तिः सप्तपुत्रे प्रविशत्यस्यैव विपुलः । See *Śaṅkharā* vs *Guṇpat Narada* 5  
BHCHOCJ 128/135, and *Jelliammal vs Kathi* 5 Mad CI/77

5 Ch VIII 1

6 The term in the text is *Īśhāṅga* (ईशङ्गा) is contemplated or thought of



(8) Here<sup>1</sup> (it may be said that) it is proper to say that it is deducible from Śāstra alone, on account of the text

An objection

of Gautama<sup>2</sup>: "An (individual becomes) owner by"

"inheritance, purchase, partition, seizure,<sup>3</sup> or finding. Acceptance is for

5 "a Brāhmaṇa an additional (mode of acquisition); conquest for a Kṣhatriya, (and) gain (by labour) for a Vaiśya or Śūdra". If the right of ownership be deducible from other (means of) proof, this text would not have any force<sup>4</sup> So Manu, while discussing the extended<sup>5</sup> application of the term thief, observes<sup>6</sup>: "A Brāhmaṇa seeking to obtain

10 "wealth from a man who took<sup>7</sup> what was not given to him, is regarded "precisely as a thief, even though he obtain it by sacrificing for such "a man or by teaching him". If the right of ownership were (deducible from) merely temporal (sources), the rule which directs the punish-

15 ment of such as obtain wealth by officiating at religious rites, or by similar means, from one 'who took what was not given to him,' would be irrelevant. Moreover, were (the right of) ownership a (purely) worldly matter<sup>8</sup> one should not say: "my property has

"been wrongfully taken by him"; for according to the above assumption the ownership would be with the trespasser. Now (if it be said that because) the property of another was seized by this man, and

20 (that therefore it) does not become the property of the usurper, (the answer is) then no doubt can arise, whether it appertain to one or the other, just as would be the case in regard to the distinction of

1 'The author sets out the opponent's argument which is called the *pūrvata*

2 Ch. X 38-42      3 Cf. *Apprehensio*, vel *Occupatio*

4 Let it would be meaningless. The original is *येदं वचनं अर्थवत्स्यात्*. "This text would have no meaning"

5 *अतिदेश* means "an extended application or application by analogy" *अतिदेशो नाम इतरेषामेव इतरस्मिन् प्रयोगस्य अतिदेशः* ।

also *अभ्यर्चयेत् प्रणीतायाः हन्त्राणां धर्मसंज्ञितैः । अन्यत्र चाप्येतं धर्मसंज्ञितं स उच्यते ॥*  
or *प्राकृतधर्मैर्नो धर्मज्ञानसमाम्नेषु कर्मात् । धर्मप्रवेशो येन स्यादतिदेशः स उच्यते ॥*

6, Ch. VIII 349

7. *निवृत्तम्* "If he wishes or desires to take or obtain"

8 See *Subodhina* Text P. 43 ff. 30-35, Tr 110 ff 7-27.

gold, silver or the like. Therefore ownership is deducible from (the commands of the *Sūtra* alone<sup>1</sup>

① {9} To this the answer is, (the right of) ownership is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do. 3  
 The Answer  
 But the consecrated fire and the like deducible from the *Sūtra*<sup>2</sup> do not give effect to actions relative to secular purposes

[It may again be argued] Indeed even the consecrated fire, &c has the capacity to boil food &c [The answer is] not so, for it is not as<sup>3</sup> such that the consecrated fire effects the boiling of food &c Then as what? [Answer] It is as fire (actually) perceptible to the senses (and) as such 10

Here, however, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, 15  
 ② A Question and an Answer  
 but by reference to ownership. Indeed, that which is not a person's property in a thing does not give effect to its transfer of it by sale or the like. Besides, the use of property is seen even among the inhabitants of the (barbarous) countries of the frontier<sup>4</sup> who are unacquainted with the practice laid down in the *Sūtra*. since purchase, sale and other transactions are observed among them 20

(10) Moreover, such as are conversant with the science of reasoning deem ownership<sup>5</sup> acquired by regulated means of acquisition

1 Here ends the objection or *pratyakṣa*, and from the next sentence follows the answer

2 The basis of the consecration of fire is *Sūtra* alone

3 A fire has two characters the spiritual one of consecration, and the worldly one of combustion. It effects the boiling of food in its worldly capacity as an ordinary fire, as also in its special spiritual capacity

4 प्रपञ्च-क्षेत्र The border or frontier region. According to the *Anurakṣa*—“The country of the *Mlechchhas*”, “प्रपञ्चक्षेत्रे म्लेच्छेषु इत्यम्” (अनुर ५११०)

5 Colebrooke translates thus “deem regulated means of acquisition a matter of popular recognition”. The original has “विशेषोक्तं सत्यम्”.

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a matter of popular recognition. In the third clause of the *Lapsā Sūtra* the venerable *Guru* has demonstrated as untemble an objection,

which might be raised as "if restrictions relative to the acquisitions

- 5 "of goods, apply to religious ceremony, there could not be any 'property, since proprietary right is not temporal', by showing that 'the efficacy of acceptance and other modes of acquisition in constituting proprietary right is a matter of popular recognition' Indeed, if

- 10 The objection acquisition of wealth be only for (the performance of) religious ceremony, there would be no right of ownership, and consequently (the celebration of) a sacrifice itself would not be possible (To this the answer would be) It is a blunder

The answer of any one who affirms that acquisition does not produce a proprietary interest since this is a con

- 15 tradiction in terms Accordingly, the Author, premising the acceptance, by popular recognition, of the notion of the right of ownership, even in stating the demonstrated conclusion, proceeds to explain the purpose of the disquisition in this manner "Therefore a breach of

1 The *Lapsā Sūtra*—(See Balambhatti Sk p-123 Subodhini p 41 Tr pp 112-114) This is a disquisition as regards the desire of acquisition (*Lapsā*) and is introduced in the Second *Sūtra* or *Adhikāraṇa* "अपि चैति इदमपि तस्य विजायतना" "वैजायतना", in the first *Pāda* of the fourth *Adhyāya* of the *Sūtras* of Jaimini

In the first *Sūtra* the distinction between religious and personal purposes is examined (नववृत्तयामिति) In the second, the inquiry is whether the acts of a man of g the milking of a cow &c are relative to the person or to the act of religion. In the third the question examined is whether restrictions as to the means of acquisition noticed in the *Udus* in reference to the four classes, must be taken as relative to the person or to the religious ceremony. And the demonstrated conclusion is that property when acquired is capable of being used for any number of purposes but it can be used only by the person who acquires it, and since, therefore, the person acquiring it is the constant factor and the purposes for which it may be used may vary, the restrictions as to acquisition relate to the person.

Acquisition implies a relation between two objects, the owner and his own-like that of a mother and son, there can, therefore, be no acquisition without the thing to be acquired, and it is a contradiction in terms to say 'acquisition does not produce proprietary right' as it is to affirm "my mother is a barren woman." See Balambhatti Sk p 126 ll 24-26 Also Subodhini Text pp 41 and 43 Tr pp 112-114

"the restriction affects the person not the religious ceremony", and the meaning of this passage is thus expounded: "If restrictions respecting the acquisition of chattels regard the religious ceremony, its celebration would be perfect with such property only, as was acquired consistently with those rules, and the celebration of the religious ceremony would not be perfect, if performed with wealth obtained by infringing the rules and consequently according to the objector, the fault would not affect the man if he deviated from the rule but according to the demonstrated conclusion since the restriction regarding acquisitions affects the person the performance of the religious ceremony is complete even with property acquired by a breach of the rule, and it is an offence only on the part of a man, because he has violated an obligatory rule." It is consequently acknowledged, that even what is gained by infringing restrictions, is property because, otherwise there would be no completion of a religious ceremony.

(11) From what has been said before it should not be supposed that even what is obtained by robbery and like such means, would be property, for, proprietary right in such instances is not recognised by the world and it (also) disagrees with established practice.

(12) Thus since property, obtained by acceptance or any other (sufficient) means is established to be temporal the acceptance of alms and similar other modes (prescribed) for a *Brahmana*, conquest and similar means for a *Kshatriya* husbandry and the like, for a *Vaisya* and service and the rest for a *Sūdra* are propounded as restrictions intended for spiritual purposes, while inheritance and like others are modes stated as common to all, (vide the text) "An individual becomes owner by inheritance, purchase, partition seizure or finding."

(13) Here (*rittha*), "inheritance" is (used to indicate) unobstructible heritance. "Purchase" is well known. "Partition" signifies

1 By the venerable Gurus & Brahmanas.

2 Of Gautama Ch X 39 (See I 982 1 above)

3 Acquisition by occupation of Occupatio

4 अविनाशः

beritage subject to obstruction<sup>1</sup> "Seizure" or occupation is the appro-  
 priation (such as) of water, grass, wood and the like, not previously  
 appertaining to any other (person as owner) "Finding" is the  
 discovery of a hidden treasure or the like. If these reasons exist,  
 5 the person is (recognised as the) owner. If they take<sup>2</sup> place, he becomes  
 proprietor. "In the case of a *Brahmana*, that which is obtained by  
 'acceptance is additional'—(the meaning of this text<sup>3</sup> is) that, in the  
 case of a *Brahmana* whatever is obtained by means of gift &c is an  
 additional (mode of acquisition) not common<sup>4</sup> (to all tribes), simi-  
 10 larly as to the text 'In the case of a *Kṣatriya*, what is obtained by  
 victory', "additional" is again understood (The meaning is that) in the  
 case of a *Kṣatriya*, whatever is obtained by conquest, amercement,  
 or the like is (an additional mode) not common (to all the tribes)  
 (So in the text<sup>4</sup>) "In the case of a *Vaiśya* and a *Sūdra* what is  
 15 "earned" (as wages by labour)" Here also "additional" is again  
 understood—(The meaning is that)—what is earned as wages by  
 agriculture keeping the cattle<sup>5</sup>, or the like, is in the case of a *Vaiśya*  
 a (mode of acquisition) not common (to all tribes), and in the case  
 20 of a *Sūdra*, that which is earned in the form of wages by service of  
 the regenerate, and by similar means, is (a mode of acquisition) not  
 common (to all tribes)

Thus, likewise, among the various causes of property which are  
 peculiar to mankind, whatever has been stated as peculiar in the case  
 of certain mixed classes in the direct<sup>6</sup> or inverse<sup>7</sup> order of the tribes,  
 25 e.g. driving of horses in the case of the *Sūtras*, and like other modes,  
 is indicated by the word 'earned', for all such acquisitions assume

1 संप्रतिवधो वाप ।

2 निपद्ये ।

3 कुलेय is the reading adopted here. There is another reading ११ मनेय  
 Tr "if they are known &c"

4 i.e. of Gautama cited above

5 असाधारण i.e. peculiar or special mode of acquisition specially mentioned

6 विजितम्

7 विविष्ट

8 कुलेष्वेव

9 उत्तरपूज—i.e. the issue of a mixed marriage when the father is of a class  
 higher than that of the mother. See *Ācharādhyaya* Ver 91-92 pp 248, 250 above

10 प्रतिलोचन—is the issue of a mixed marriage where the mother is of a higher  
 class and the father of a lower one. See *Ācharādhyaya* Ver 93-94 p 252 above



the form of wages or hire : for according to the ( lexicon ) Trikaṇḍeś  
“ the word *niricā* is used to indicate wages or occupation.” All this  
should be understood as wealth acquired by modes not common  
( to all tribes )

( 14 ) As for the precept<sup>2</sup>, (respecting the succession of) ‘the widow 5  
and the daughters’ &c., the declaration (of the order of succession),  
even in that text, is intended to prevent any mistake, although the  
proprietary right be a matter familiar to the world, where many persons  
might ( but for this precept ) be supposed entitled to share the heritage  
by reason of their affinity to the ( deceased ) owner. The whole is 10  
therefore unexceptionable.

( 15 ) As for the remark, that if property were temporal, it  
The objection. could not be said “ my property has been taken  
and “ away by him ”, that also is not accurate; for a  
The answer doubt respecting the proprietary right does arise 15  
through a doubt concerning the purchase, or other transaction, which  
is the cause of that right.

( 16 ) The purpose of the preceding disquisition is this : A  
text<sup>3</sup> says : “ When *Brāhmanas* acquire wealth by a blameable act,  
“ they are purged of the guilt by the abandonment of such wealth, by 20  
“ prayer, and by rigid austerity.” Now, if property be deducible only  
from *Sāstra*, that which has been obtained by blameable means *e. g.* by  
accepting presents from an improper person, or by barter, or similar  
other means would not be property at all, and consequently would  
not be property partible among sons. But if the proprietary interest 25  
be a worldly matter then even what is obtained by accepting presents  
from an improper person &c. is property, and may be divided among  
heirs; and the atonement above referred to in the text “ they are  
“ purged of the guilt by its abandonment &c.” regards the acquirer  
only; but of the sons, however, their proprietary 30  
interest arises by their right of inheritance and

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1. Amara III 5-214.

2. Yājñ II. 135, *infra*

3. Of Manu Ch. XI 194

therefore no blame attaches to them, since Manu<sup>1</sup> says. "There are  
"seven lawful modes of acquiring property, (1) inheritance, finding,  
"or friendly donation purchase, conquest lending at interest, the  
"performance of work, and the acceptance of gifts from virtuous men"

- 5 (17) Next, it is doubted whether the right of property arises  
from partition or the division of a proprietary interest which already  
was existing? (18) Of these (positions), that  
Another position of property arising from partition is right, since  
a man to whom a son is born is enjoined to  
10 maintain a holy fire for, if property were vested by birth alone,  
the estate would be common to the son as soon as born and the  
father would not be competent to maintain a sacrificial fire and per-  
form other religious duties which are accomplished by the use of  
wealth (19) Likewise, the prohibition of a division of that, which  
15 is obtained from the liberality<sup>2</sup> of the father, previous to separation,  
would not be pertinent since no partition of it can be supposed, for  
it has been given by consent of all parties. As says Nārada<sup>3</sup>  
"The two kinds of property, 1) gain of valour and the wealth of a  
"wife, and also that which is acquired by science—are three kinds of  
20 "property not subject to partition, and so is a favour conferred by  
"the father (exempt from partition)" (20) So the text<sup>4</sup> concern-  
ing an affectionate gift viz. what has been given by a husband,  
"when pleased,<sup>5</sup> to his wife, she may consume as she pleases, even  
"when he is dead, or may give it away excepting immovable  
25 "property," would not be pertinent, if property were vested by birth  
alone. Nor is it right to connect the words "excepting immovable  
property" with the terms "what has been given" (in this text),  
for that would be a forced construction by connection of disjointed

1 Ch. V 115. See *Tonnappa vs Pappanna*, *major* 4 Mad at page 21—  
where the court enters into an elaborate discussion of these and other passages of  
the Mitāksharā, for determining the relative positions of a father and a son  
under the Mitāksharā.

2 अङ्गः = favour, pleasure

3 Chapter VIII-6

4 Of Vishnu

5 Cf. Mayukha IV 10-2 where it is ascribed to Nārada

See—*Dandekar vs Purnanandas* 7 Bom 163 *Jagmohan Das vs Mangaldas*  
10 Bom 546 *Suryanarayana vs I. Sankar* 25 All 333

terms (21) As for the text "The father is master of the gems, pearls and corals and of all (other movable property), but neither the father nor (even) the grand father is so of the whole<sup>1</sup> immovable 'estate' and also (the text<sup>2</sup>) 'By favour of the father, clothes and ornaments are used but immovable property may not be consumed, even with the father's indulgence'—which passages forbid a gift of immovable property through favour they both relate to immovables which have descended from the paternal grand father And although after the grand father is dead his effects become the common property of the father and sons it appears even from this text, that the gems pearls, and other movables, belong exclusively to the father, while the immovable estate remains common (22) Therefore property is not by birth but by demise of the owner or by partition Accordingly, since the demise of the owner is a cause of property there is no room for supposing that a stranger could not be prevented from taking the effects because the property was vacant<sup>3</sup> after the death of the father before partition So likewise, in the case of an only son the estate becomes the property of the son by the father's decease, and does not require partition

(23) To this the answer is It has been shown that property is a matter of popular recognition and the right of sons and the rest, by birth, is most familiar to the world and so it cannot be denied but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned For the text of Gautama expresses "Let ownership of wealth be taken by birth as the venerable teachers direct." (24) Moreover the text above cited viz<sup>4</sup> "(the father is the master) of 'gems, pearls corals &c'" is pertinent to the supposition of a proprietary

1 अथ—The meaning of the text is that, not the father not even the grand father is the master of any of the immovable property &c

2 The author of this text is not known

See *Shri Sūtram Pāṇini* vs *Shri Harshar Pāṇini* 35 Bom 180 at p. 181

3 अथवा—There being no proprietary right over the property &c on account of the non-existence of the owner &c (See *Balambhatti Sk.* p. 131).

4 vs of Nārada II. 1-4 above

right vested by birth. Nor is it right to affirm that it relates to immovables which have descended from the paternal grand father,<sup>1</sup> since the text expresses "neither the father, nor even the grandfather<sup>2</sup>." This rule<sup>3</sup>, that the grandfather's own acquisition should not be given away while a son or a grandson is living, indicates a proprietary interest by birth. According to *the other opinion*, the precious stones, pearls, clothes, ornaments, and other effects though inherited from the grandfather, belong to the father under the special provisions of the law, so according to our opinion also, the father has<sup>4</sup> power, under  
 10: the same text, to give away such effects, though acquired by his father. Thus there is no<sup>5</sup> difference.

(25) As for the text of Vishnu<sup>6</sup> vi "(That which has been 'given') by the husband when pleased &c" which mentions a gift through affection, that must be interpreted as relating to property acquired by the father himself and given with the consent of his sons and the rest for, by the text<sup>6</sup> above cited vi "(the father is the 'master of) gems pearls &c' the fitness of things only those other than immovables, for an affectionate<sup>7</sup> gift was determined with certainty (26) As for the alleged disqualification<sup>8</sup> for religious  
 20 duties which are prescribed by the *Veda* and which require for their accomplishment the use of wealth sufficient for such purposes is inferred from the cogency of the text itself which enjoins their performance and which is in the nature of a command.

1 The word ancestral can only apply to the property of the paternal grand father and his ancestors and not to the self-acquisition of the father. See *Dayanath vs Mahara*, 8 Luck 28, see also *Muhammad Hussain vs Aissa Noorden* 30 Bom L. R. 979 (P. C.)

2 vi—That which is stated in the text of Narada cited above

3 See no 1 p 394

4 i. e. Difference of opinion

5 Cited above at p 388, ll 23-24

6 i. e. of Narada & Jyātur

7 Thus a father cannot give even a small portion of ancestral property to his daughter on the ground that she looked after him in his old age. *Jannappa vs Chinnara* 59 Bom 409 nor can he make a will. *Parvatham vs Jihagran* 30 Bom 593

8 Both Balambhatti & Subodhina explain this by saying that the power to perform these is given by special texts which enjoin their performance

(27) Therefore<sup>1</sup> (it is settled that) ownership in the father's or grand father's<sup>2</sup> estate is by birth. Still it (also) stands (as good law) that the father has independent power in the disposal of effects others than immovables for indispensable acts of duty and for purposes prescribed by the texts of law as gifts through affection, support of the family, relief from distress and so forth, but he is subject to the control of his sons and the rest in regard to the immovable estate, whether acquired by himself or inherited from his father or other

1 This text regarding the birth right in the ancestral property and the father's power of disposal over the same has been noticed in various cases.

In *Raja vs Timma* 7 Mad 307 at p 362 Turner O J observes as follows in regard to this portion of the *Mitākshara*. The effect of the several passages taken together is that while the ownership of the son is recognised in all property, whether the self acquired property of his father or ancestral the father has power to dispose at his pleasure of his self acquired movables and with a consent which his son must give of his self acquired immovables—he has the power to dispose of ancestral movables for purposes incalculated by sacred texts and of all property for indispensable acts of duty but the son may interfere with him if he applies ancestral wealth whether movable or immovable to purposes other than those sanctioned. See also *Jeyappa vs Chimmara* 59 Bom 409–37 Dom. L R 482–487 and 50 Cal 263–271 40 All 96 (will by the father).

The following may be noted as some of these.

*Poo Balwant Singh vs Poo Ashori* 2 I A 511 6 at p 68 *Gandhi Vignani* vs *Bai Jodhab* 21 Dom 214 *Bachoo vs Hussaindas* 20 Dom 61

*Ponnappa I illa vs Pappurayyanar* 4 Mad at pp 8 16, 43 &c

*Gangula vs Ancho Bajulu* 4 Mad at p 89

*Sivasubram Mudali vs Parra Anna* 4 Mad at p 103

*Varaswami vs Venkataswami* 8 Mad 293

*Anna Taular vs Jambhandra Taular* 32 Mad at p 381

(This case discusses the several portions of the *Mitākshara* bearing on the father's right over ancestral property generally.)

*Kali Parshad vs Ram Charan* 1 All 116 *Sati vs Madho* 1 All 256

*Javeda Aker vs Shoo Parshad* 17 Cal at p 36

*Chandraden Singh vs Unto Parshad* 31 All 176 180 184 187 211

*Anand Ram vs Mangalson* 31 All 349

*Mohamud vs Anfur Mendel* 25 Cal 804

2 Col brooke translates as 'ancestral'. The word in the original text is *pitṛbhāgā* i.e. belonging to the grandfather. Mr. Colebrooke's translation has been commented on in *Jayva Prasad vs Poo Perai* 22 All at p 662 referring to the remarks of Mr. J. C. Chose in his *Hindu Law* page 376 (2nd Ed.)

predecessor, *into* the text<sup>1</sup> "Though immovables or 'bipeds have been  
"acquired by a man himself, a gift or sale of them should not be made  
' without convening all the sons. They, who are born, as also they who  
' are yet unbegotten, and they who are still in the womb, require the  
3 ' means of support, no gift or sale should, therefore, be made."

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(28) An exception to it follows<sup>2</sup> "Even a single individual  
An exception stated "may conclude a donation, mortgage, or sale, of  
' immovable' property, during a season of distress,  
"for the sale of family, and especially for pious purposes" (29) The  
10 Explained meaning of that text is this while the sons and  
grandsons are minors and incapable of giving  
their consent<sup>3</sup> or doing similar acts, or while the brothers are so and  
continue unseparated, even one person, who is capable, may  
conclude a gift, hypothecation or sale, of immovable property,  
13 if a calamity affecting the whole property require it, or for sup-  
porting the family, or for performing indispensable<sup>4</sup> duties,

1 "Of Vyāsa as cited in other compilations"—Colebrooke

2 *Bṛhaspati* as cited in the *Ratanakara* & —Colebrooke.

3 See *Bhau vs Rajhans* 70 Bom at p 233, also *coo, Gostind vs Deolajy* a 40  
Bom L B 530 at p 343

4 and thus render the expenditure a valid binding charge upon their shares.

5 "Indispensable duties" The expression in Sanskrit गृह्य कर्तव्ये विप्रदादि—  
(*Ācāryam Kartavyeṣu parivādādiḥ*) Tr "For acts which must be performed  
such as obsequies of the deceased ancestors and the like" (see 34 Mad at p 431)

This expression has been subjected to judicial criticism—see *Govindara ulu vs*  
*Devarabhatta* 27 Mad at p 209 As regards the term *Ādi*—and the like—at the end  
of the above expression, *Muttaswami Ayyar J* observes as follow in *Ponnappa vs*  
*Papparayannar* 4 Mad at p 17 "The phrase *Ādi* both according to Hindu  
law and the rule of construction, refers to annual Śrāddhas, the ceremony of  
upanyāsa in the case of minors in the three higher classes, and of marriage in  
the case of girls &c—and in short to such ceremonies as, if unperformed, would  
entail a forfeiture of caste or status etc"—and it was held in 27 Mad 209 that  
that expression could not be extended to the marriage of males. This interpreta-  
tion was dissented from later on in *V. Ammaswami Sastri vs Venkatchari*, 34 Mad  
where at p 434 it is observed, "the word *Ādi*—means "beginning with" and  
merely indicates that the father's ceremony which is named is one out of a group  
of ceremonies" The expression simply means "acts, such as the Śrāddha and  
the like others which have necessarily to be done" See also 32 Bom 31

such as obsequies of the ancestors<sup>1</sup> (manes) (30) As for the text<sup>2</sup>—  
 'Kinsmen whether unseparated or separated are equal in respect  
 of (rights in) immovables, for one (alone) has not power over the  
 whole to make a gift sale or mortgage—it must be interpreted thus  
 among unseparated kinsmen the consent of all is indispensably  
 requisite because since the estate is held in common no one is fully  
 empowered to make an alienation but among separated kinsmen  
 the consent of all tends to the facility of the transaction, by obviat-  
 ing any future doubt as to their separation or union it is not  
 required on account of any want of sufficient power in the single  
 owner and hence the transaction is valid even without the consent  
 of separated kinsmen (31) Again as for the text<sup>3</sup>— Land passes  
 by six (formalities) by consent of townsmen of kinsmen of neigh-  
 bours and of heirs and by gift of gold and water—consent of  
 townsmen is required for the publicity of the transaction since it is  
 provided<sup>4</sup> that 'acceptance of a gift especially of the immovable pro-  
 perty should be public, but not that the contract remains incomplete  
 without the consent of the townsmen the consent of neighbours  
 serves to obviate any dispute concerning the boundary the use of  
 the consent of kinsmen and of heirs has already been explained  
 (32) By gift of gold and water—since the sale of immovable pro-  
 perty is forbidden by the text 'In regard to the immovable estate  
 sale is not allowed (but) a hypothecation may be made with the con-  
 sent (of persons interested), and since also donation is praised in the  
 text Both he who accepts land as a gift as also he who gives it are  
 performers of a holy deed and shall surely go to heaven,' even when  
 a sale is to be made it should be conducted, for the transfer of  
 immovable property, in the form of a gift, delivering with it gold  
 and water (to ratify the donation) This is the meaning

1 Colebrooke translate obsequies of the father but the word *pitr* when  
 used in connection with *Śraddha* indicates other ancestors also who are dead and  
 whose *Śraddha* is to be performed

2 Of Bṛhaspati XXV.—13 See *Ponnappa vs Poppa ayyangar* 4 Mad 1 at  
 pages 9 10 54 where this text has been referred to and discussed

3 The author of this passage is not known

4 Yājñavalkya II 176 see III A 218 at p 930

( 33 ) Although the right of property is by birth alone in the estate of the father or the grandfather, we shall mention (later on) a special rule in the text (II. 121) "Land which was acquired by the grandfather &c."

[ Colebrooke Sect. II. ]

5 (1) Now<sup>1</sup> with a view to expound, at what time, by whom, and how, partition may be made, the Author says

Yājñavalkya, Verse 114.

If the father makes a partition, let him separate his sons at his pleasure, and either separate the eldest with the best share, or ( if he  
10 choose ) all may be ( made ) equal sharers

Mitākṣharâ —( 2 ) Vibhāgam cheṭi pitā kuryāt *if ( ever ) the father wishes to make a partition, then icchayā vibhajet, he may at his pleasure separate, sūtān, his sons from himself ; whether one, two, or more sons*

15 (3) The will being unrestrained and no rule being suggested, the Author adds, by way of restriction, *jyēṣṭham* Special rule for the share of the eldest *wā jreṣṭhabhāgena, and either ( separate ) the eldest with the best share. From this it is understood<sup>2</sup> that he may separate the eldest with the best share, the middle-most with a middle share, and the youngest with the smallest<sup>3</sup> share.*  
20 (4) This distribution of the best and other portions is propounded by Manu<sup>4</sup>: " The additional share ( deducted ) for the eldest shall be "one-twentieth (of the heritage) and which is the best of all the  
" chattels ; for the middle-most, half of that ; for the youngest, a  
25 " quarter of it "

1 अहंस्व—Tr which pointing out ( as to, at what time &c,—the Author says &c ) This portion has been referred to in *Kaśī Parāśar vs Pancharan* 1 All 160 ( F B ) Where it has been held that " The son has under the *Mitākṣharā* right to demand partition and part of his share in the ancestral immovable property during the life time of the father and against his will "

2 अहंस्व : &c it follows

3. &c as given in the text of *Manu* here immediately following

4 Ch IX 112.



(5) The term *wā, either*, is relative to the subsequent alternative *viz*, *sarve wā syuh samāhśinah* or 'all may be equal sharers, i.e. or all, namely, the eldest and the rest, should be made partakers of equal portions.

(6) This unequal distribution moreover, is allowed in reference to property acquired by himself. But, if the wealth descended to him from a line of<sup>2</sup> ancestors, an unequal partition at his pleasure is not proper, as equality of ownership (over such property) will<sup>3</sup> be declared (further on)

(7) Under the text<sup>4</sup> "If the father makes a partition &c", when the father desires separation, that is one period for partition. Another period, also, is when, even when the father is living, but is indifferent to wealth and disinclined<sup>5</sup> to pleasure, and when the mother is incapable<sup>6</sup> of bearing issue — at such a time a partition is admissible merely at the option of the sons<sup>7</sup>, even against the wish of the father, as is shown by Nārada,

\* PAGE 77 who, premising partition subsequent to the demise of both parents by the text<sup>8</sup>. "Therefore, let the sons divide the wealth equally, when the father is dead", adds<sup>9</sup>, 'Or "when the menstruation of the mother has ceased, and the sisters are married, or when the father's sexual desire is extinguished, and he has become indifferent to worldly interests" Here the words "Let the sons divide the wealth equally" are understood. Gautama<sup>10</sup> likewise, having said "After the demise of the father, let the sons divide his estate," states a second period "or when the mother is past

1 अक्षयम्—Hereafter to be stated

2 Colebrooke translates "from his father", but the expression is विष्णुमन्त्रे पितृक्रमयते) Tr "descended from an unbroken line of male ancestors"

3 Yajñavalkya II 121

4 Yajñavalkya II 124

5 निवृत्तमे—Is satiated or fed up with pleasures

6 इत इत means—and when the mother has ceased to menstruate

7 The Sanskrit expression is पुत्रैर्वा, at the mere option of the sons. The word पुत्र is used in a collective as also in a distributive sense. It may therefore be at the option of one son or of more

8 Ch XIII 2

9 Ch XIII 3

10 Ch XXVIII 12

- "child bearing," and a third period has been indicated viz, " while the father lives if he desires separation " So, even while the mother is capable<sup>1</sup> of bearing more issue, though the father be unwilling, if he be addicted<sup>2</sup> to vice or afflicted with a lasting disease a partition is admissible by the choice of the sons As says Saṅkha ' (Even) when the father does not wish partition of inheritance takes place if he be 'old, disturbed in intellect, or diseased.' ( 114 )

### Sūlapāni

#### Now the Distribution

#### Yājñavalkya Verse 114

10

The father if he makes a distribution of his self acquired property, then he may make the sons separate according to his wish, and not the wish of the son

- As says Vishnu<sup>3</sup> ' If the father separates the sons he may make the sons separate according to his wish in regard to property acquired by himself In regard to the grand father's property, however, the ownership of the father and the son is equal partition cannot be according as he may wish.' Here ownership is the cause.

- So Devala When the father is dead the sons may divide the father's property There will be no ownership of these when the father is living and faultless<sup>4</sup> Faultless is not degraded

At some places Nārada<sup>5</sup> mentions a division by the wish of the son even in regard to the father's acquisitions thus ' When the mother has ceased to menstruate and the sisters have been married when the father's

1 अग्रवर्णाया—( Lat ) has ( yet ) the menstruation

2 The translation of Mr Colebrooke is retained here—but the expression in Sanskrit is अप्रवर्तिते ' when his conduct is not in conformity with (the rules of) Dharma —has a wider meaning and force Being addicted to vice is only one phase of " the conduct not being in conformity with Dharma ", and the son would thus have a wider range of circumstances under which he can ask of a partition

Moreover in explaining the text of Śaṅkha in the next line Balambhatta gives अप्रवर्तिते as an equivalent of (मनोविकल) —which Col brooke has translated as ' disturbed in intellect According to him the two expressions bear an identical meaning and would mean— When the father has become irreligious '

3 Ch XVII 12

4 Ch XIII 3

'sexual desire is extinguished, and he has become past (all) desires"  
'Sexual desire is extinguished,' i.e., when his capacity for sexual enjoyment is gone Past (all) desires': e., from the householder's position to that of the hermit

*Jyeshtham va* 'Or the eldest &c': e., he should separate them with the largest share for the eldest Or he may so make (the partition) that all may become equal sharers So *Nārada* 'By the father himself, those who have been separated into equal or less shares of the property, for them that itself is the law, indeed the father is the master of all' (114) 5

(8) Partition at the pleasure of the father has been stated to 10  
of be of two sorts i.e., equal and unequal In this connection, in the case of an equal partition the Author adds a particular rule

### Yājñavalkya Verse 115

If he make the allotments equal, his wives<sup>1</sup> (such of them) to whom 15  
no *Strīdhana*<sup>2</sup> had been given by the husband or the father-in-law, must be made partakers of equal portions

*Mitāksharā* —(9) When by his own choice the father makes all his sons partakers of equal portions then the wives also should be made participants of shares equal to those of sons *Yātām* such of the wives *bhartrā swasura wā strīdhanam na dattam*, to whom no *strīdhana* 20  
had been given by the husband or by the father in law But if *strīdhana* had been given (to a woman) the Author directs further on<sup>4</sup> (verse 118) half a share to be allotted to her (in the text) "or if any had 'been given, let him assign a half" (10) If, however, he make the allotments by allotting the best share, &c., to the eldest &c., then the 25  
wives do not get the best or such other portions, but receive equal shares of the aggregate from which the special shares have been

1 Ch XIII 15

2 A The comments of *Jatavakya* on this should be not v. If equal shares are allotted by the father the wives of his sons and grandsons and his own wives to whom no *strīdhana* has been given be their husband or father in law or himself should be made partak. of their husband's share (*As Jatavakya* p. 217 ll 10-12, See also *The Dharma Saṅgraha* VI l 27-43.

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1 Ch XIII 15

2 A wife gets this share only after the actual distribution *Pratapmull v*, *Dānabati* 63 Cal 691, (10) *Rang v Anant* 42 Bom 533

3 Colebrooke translates the word *Strīdhana* as *separate property*—Having regard to the technical character of this expression and having regard to the fact that the word is more properly understood as *Strīdhana* than by any of its English equivalents, the original word has been retained in the translation

4 *Sho Naray v Jank Prasad*, 31 All 508 See *Govindya v Pappunayyengar* 4 Mad 1/20-22 (F B) *Sumra Thakur v Chander Nani Thakur* 8 Cal 17

subtracted, as also their special additional share as laid down by Āpastamba 'And the furniture in the house.' The ornaments, are the "wife's (property)'

### Sūlapāni

5

Yājñavalkya, Verse 115

Yad, 'If &c' If the father, by his wish makes them (the sons) partakers of equal shares then the wives also who are without sons should be made partakers of equal shares, to whom *Strīdhana* has not been given by the husband or any other by reason of the text 'Or if any had been given a half has been declared' If however *Strīdhana* had been given, half should be given

Himself, however, if there be (only) one son he should take two shares If he has more than one sons less than two shares As say Śankha and Likhita 'He, if he has one son, should make two shares for himself

15 Similarly also Two shares should he take for himself, when the father 'makes a partition' This text<sup>1</sup> of Nārada is even to this effect also (115)

#### 1 II 14-5 9

Mr Colebrooke translates 'The furniture in the house and her ornaments are the wife's (property)— this is in accordance with the published 'extracts' of the text of Āpastamba. A reference to the text of Āpastamba itself however points to a different state of things. This text occurs in the 14th *Kānda* of the 2nd Book of Āpastamba's *Dharmasūtra*. This *Kānda* treats of the *Dāyasthāna* or "Distribution of heritages". From § 1 to 6 the general line of heirs is mentioned § 5 mentioning the king as taking by escheat. Then from § 6 begin special rules of inheritance, and § 7 and § 8 give the special right of the eldest son to certain items of property, § 9 mentions the wife's claim to special property and § 10 modifies it to some extent. The text quoted in the *Mitāksharā* is part of § 8 and 9. Paras 7, 8, 9 and 10 run thus

"In some countries, gold, black cattle, black produce of the earth is the share of the eldest (7) The chariot, and the furniture in the house according to some § (8) The share of the wife consists of her ornaments, and the wealth of the *gṛha*. That, however, is opposed to *Sāstra* (9)

It will thus be seen that 'the furniture in the house' in the passage from Āpastamba forms part of § 8 which (together with § 7) exclusively mentions properties which go to the eldest son, while it is in para § 9 alone that a reference to the ornaments of the wife is made. The translation given above and the punctuation are in accordance with this reading of the text

(II) To the two alternatives before stated, viz, "and either separate the eldest with the best share or (if he choose) all may be (made) equal sharers" (II 114 p 994 l 9 above), the Author propounds an exception

Yājñavalkya, Verse 116 (1)

5

Of one who is able and who is not desirous of having any share, the separation may be effected by giving (him) a trifle

Mitāksharā —(12) To one who is himself competent to earn wealth, and anibamānasya who is not desirous of having any share from his father's wealth : i. e., who does not wish to have any share, anything, whatsoever, : i. e., *kañchid a trifle* an article of no value may be given and *prīhak kṛyā, separation effected i. e.,* the division may be (thus) completed by the father, so that the children, or other heirs of that son, may have no future claim of inheritance 10.

(13) By the text "or the eldest with the greatest share" the distribution of greater and less shares has been shown. To forbid, in such a case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions (of the special shares) such as are dictated by *Sāstra* the Author adds 16

Yājñavalkya, Verse 116 (2).

20

A partition made by the father among sons separated with greater or less shares, if (it be) according to *Dharma*, is pronounced valid.

Mitāksharā —(14) Of the sons *vibhaktānām separated* *pyūnādhuḥka,* with a greater or less share if such an unequal partition be *dharmyaḥ made according to Dharma,* : i. e. as dictated by *Sāstra*, then that division, *pīrkrtaḥ made by the father,* is (regarded as) completely made, and cannot be afterwards set aside, *this is pronounced smṛtaḥ by Manu* and the rest. If, however (it be) otherwise, it may be set aside even though made by the father. As says *Narada*<sup>2</sup> "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by sensual passion, or who acts contrary to what the *Sāstra* dictates, has no power in the distribution of the estate" 25 30

## Vīramitrodaya

Now the Author begins the Chapter on *Dāyabhāga*. Its definition has been given by Nārada<sup>1</sup> "Where a partition of the paternal estate is instituted by the sons, it is called by the learned—partition of the

5 "*Dāya*—a title at law

By the use of the two terms *pitṛya* 'paternal', *janayak* 'sons', it is intended to show that it is indicative of only those relations by propinquity who are connected through his own seed. *Vibhāgaḥ*, 'partition' i. e. where property is held in common ownership, and when by particular arrangement and the like, that is removed and a restricted ownership is superimposed. *Dāya*, means 'wealth', i. e., wealth which was acquired by reason of relationship to the owner. A share of that is *vibhāga*, 'partition'

Here, the Author first states the partition when the father is

15 living

## Yājñavalkya Verses 114 115 116

*Pitṛ*, 'the father', *eket*, 'if', *vibhāgam* 'a partition', i. e., of property of his personal ownership as being either his self acquisition, or property (lost to the family and) recovered by him. *Kuryati*, 'makes,' then *icchikṣya*, 'at his pleasure', i. e., according as he may desire, by giving property more or less even, *śulān*, 'the sons,' he 'may separate' *vibhāgaḥ* That says Vishnu<sup>2</sup> "If a father makes a partition with his sons, he may dispose of his self acquired property as he likes. Manu<sup>3</sup> also "When

20 "the father acquires ancestral property which was unrecoverable, the "property he need not divide with his sons if he does not (so) desire, it is his self acquired. The father may leave such recovered property (which was lost), but in regard to other property, when the father makes a partition, *śarīre* 'all, the sons, should be the participators of equal shares

30 In regard to the eldest, with the eldest son's share i. e. together with a tenth or a twentieth part, he should divide

Of the sons, moreover, the shares should be made equal to his

On the other hand, however, of the father who makes the partition, of the wives for whom *bhartrā ud itasareṇa va* 'either by (their) husband or by (their) father in law, *na strīdhanam dattam*, 'no *strīdhanam* had been given, those wives, and the wives who have *strīdhanam*, should be made participators of equal property, or should be given shares from the

35



divided property. If, however, in pursuance of the text of Nārada<sup>1</sup> viz.,  
"Two shares should he take for himself, when the father makes a  
"partition," or in pursuance of the text of Hārita viz., "Or after  
"dividing a small portion, he should take the largest and remain", he  
(the father) takes a double or a very large share for himself, then from 5  
his own share itself, 'they should be made partakers of equal portions'

*Saktasya*, 'of one who is competent' i.e., who is himself competent  
to make acquisitions, and from the ancestral property, *anbandhasya*,  
'who is not desirous of having (any share), i.e., who does not wish,  
to such a son, some small share, such as a *prastha* of rice or the like, for 10  
meeting the objections by his son, should be given by the father, and  
by the brothers also, *prthak kṛiyā*, 'the separation should be effected',  
i.e., the partition should be made

Of those who have been separated with the assignment of more or  
less i.e., unequal property, even such, a partition as made by the father is 15  
pronounced to be legal, *dharmaḥ*. Therefore one should not raise object-  
ions at a later time. As for the father, by reason of the same being  
disliked by the people, such a partition is certainly, illegal. This is the  
meaning. *Vide Āpastamba*<sup>2</sup> "After having gladdened the eldest son  
"by some (choice portion of his) wealth, during his life time, he should 20  
"divide his wealth equally amongst his sons, 'by some property' i.e., by  
a choice portion of his property. By the particular mention of *su it*,  
'during his life time,' he intends that after he is dead, the wife does not  
get a share (114-116)

### Sūlpāni

21

### Yājñavalkya Verse 116

*Saktiḥ*, 'Able &c.' One who by reason of his learning &c. is com-  
petent to earn and has no desire for the common property, such a one  
should be made separate by the brothers after giving him a title such as  
a rice-field, or the like for obviating any disagreement by his sons in 1  
aftertime

Of those, however, who have been made separate with more or less  
by reason of its having been made by the father, that itself is (according  
to) law. In such a case no disagreement should be permitted in after-  
time (116)

25

\*PAGE 78.

[Colebrooke Sect. III.]

[Partition after the father's decease.]

(1) The Author next propounds another period of partition, other persons as making it, and a rule respecting the mode :

Yājñavalkya, Verse 117 (1).

The sons should divide, after the parents, both the assets and the debts, of them equally.

Mītākṣharâ :—(2) *Pitroh, of the parents i. e., of the mother and the father, ūrdhwam, after, i. e., after the death.* Thus the period (for partition) is shown. By (the expression the) *satāḥ, sons,* the persons who make the distribution are indicated. By (the expression) *samam, equally,* the rule as to the mode (of partition) is indicated, *i. e., in equal shares only,* they should divide the assets and the debts.

(3) But Manu, having premised "after the death of the father and of the mother" and having declared, "The eldest alone may take the whole paternal estate;

"the others should live under him just as (they lived) under their father";

has said : "The additional share (deducted) for the eldest is the

"twentieth part (of the heritage), as also that which is the best of all

"chattels; for the middlemost, half of that, but one-fourth for the

"youngest". Of the entire property the twentieth portion, as also that

which is the best of all the chattels, that must be given (by way of

deduction) to the eldest; half of that, a fortieth part, and a midd-

ling chattel, should be allotted to the middlemost, and a quarter of

it—the eightieth part, and an article of low quality should be given

to the youngest, and thus Manu has exhibited a distribution with

deductions among brethren separating after the death of the mother

and the father.

Moreover, by the text? "But if there be no deduction, the allotment of shares shall be in this manner : Let the eldest son take one

1. See *Jaimini vs. Nandini* 31 Bom. 54—8 Bom. L. R. 634.

2. Ch. IX. 104.

3. Ch. IX. 105.

4. Ch. IX. 112.

5. Colebrooke Tr. "worst chattel".

6. From here begins the last part of the objection against an "equal portion."

7. Ch. IX. 116—117.

share in excess and the next born one half share more and the younger ones one share each, thus is the law settled, thus by allotting to the eldest two shares to the ( brother ) next born a share and a half and to those born next after one share each even when without deductions he has directed an unequal partition among brethren separating after the demise of the parents 5

And when a division is made during the father's life time the Author ( :c Yājñavalkya ) himself has exhibited an unequal distribution ( by the text ) " Or the eldest with the best share &c ( II 114 p 182 l 21 above ) 10

Hence an unequal partition is admissible even at all times How then is a restriction introduced requiring that sons should divide only in equal shares ?

( 4 ) The question ( put ) here is thus answered True this unequal partition is found in the *Sastra* still however, as 15  
The Answer it is abhorred by the world it must not be practised since that is forbidden by the text<sup>1</sup> One must not practise that which procures not the celestial bliss and is abhorred by the people even though it be allowed by law As for example notwithstanding the direction in the text<sup>2</sup> Let him offer a big bull or a big goat to 20  
a venerable priest still as that is abhorred by the people it is not practised Also as 'Slay a barren cow as a victim consecrated to Mitra and Varuna notwithstanding this direction as to the slaughter of a cow in the text still as it is abhorred by the people that is not practised 25

( 5 ) It has also been said<sup>3</sup> As the law relating to appointment "and also the rule regarding the slaughtering of a cow as a victim is not now in use, so also is the partition with deductions not current now "

( 6 ) Āpastamba, also having delivered his opinion ( in the text<sup>4</sup> )  
' He ( :c the father ) should, during his life time divide his wealth 30

1 Jay. arāṇya I Job I 765 II 7-4 above

2 Jay. arāṇya I 169 p 307 II 30 3. above

3 In a text of Jātaka—( :c Bāṇabhatta p. 139 ) The meaning is that there are two *śāstra*—one ordained by the *Īśa* and the other ordained elsewhere than *Īśa* :c Bāṇabhatta and *Sūtra* II 114

4 II 6 11 1

equally amongst his sons' and by the text<sup>1</sup> "Some hold that the eldest is the heir" having refused, as the opinion of some, the succession of the eldest to the entire estate, and having exhibited as the opinion of others the distribution by (the method of) deductions having regard to (the usage of) particular places:<sup>2</sup> "(In particular countries), gold black lime and the black produce of the earth belong to the eldest. The chariot and the furniture in the house are the father's and according to some ornaments as also property (received by her) from kinsmen belong to the wife" has refuted it as being forbidden by *Sūtra*, and has himself pointed out the prohibition in the *Sūtra* thus<sup>3</sup>. It is recorded in Scripture without distinction that Manu distributed his heritage among his sons<sup>4</sup>.

(7) Therefore unequal partition though noticed in the *Sūtra* still as it is disapproved by the world and is contrary to Scriptures it should not be practised. And for this reason the restrictive rule is laid down, vi (the brethren) should divide only in equal shares<sup>5</sup>.

(8) It has been declared that sons may part the effects after the death of the mother and father. There the Author states an exception in regard to the mother's (separate) property.

Yājñavalkya Verse 117 (3rd quarter)

Of the mother's (property) the daughters (shall take) the residue (after the payment) of debts.

Mitāksharā—(9) *After the Mother's property, daughters, the daughters shall divide nachchhesam the residue of debt: i.e. the residue (remaining) after the discharge of the debts contracted by the mother. Hence, the purpose (of the preceding part) of this text is that when the mother's assets are equal to or less than her debts the sons may (take and) divide them.* (10) The<sup>6</sup> meaning is this. A debt incurred by the mother, must be discharged by the sons only and not by the daughters but the

1 *Āpastamba* II 6 14 8    2 *Āpastamba* II 6 14 9    3 *Āpastamba* II 6 14 11

4 This is a passage from the *Taittiriya Veda*—Balamihutta. There is a mis- take in the print of the text for सप्तः पुत्रेभ्यः read सप्त पुत्रेभ्यः पुत्रे

5 See *Vithalrao vs Kamrao* 24 Bom 317—2 Bom L R 164 166

daughters shall take the residue of her assets after the payment off of her debts. And this is proper. For by the rule<sup>1</sup>: "A male child "is procreated if the male seed predominate, a female child by the "prevalence of the female," as portions of the ( body of the ) female ( parent ) abound in the female children, the *Strīdhana* property goes to the daughters, and as portions of ( the body of ) the father abound in the male children, the father's estate goes to the sons.

(11) Even<sup>2</sup> there, a special rule has been propounded by Gautama<sup>3</sup>, "The *strīdhana* property goes to her daughters unmarried, and "( failing them ) to the unprovided". The meaning of this is this: If there be a competition of married and unmarried daughters, to the unmarried alone goes the *strīdhana*; and if among the married daughters there be a competition between the endowed and the unendowed ( daughters ) it belongs exclusively to such as are unendowed. 'Unendowed' means destitute of wealth.

( 12 ) In answer to the question, "in the absence of daughters "who should take the residue of the mother's estate that may remain "after payment of her debts"? the Author adds :

Yājñavalkya, Verse 117 ( last quarter )

In their default, the issue ( succeed ).

Mitākṣharā:—( 13 ) Tābhyā, in their absence, i. e., of the daughters i.e. i., in default of daughters, anyway, the issue, i. e., the sons and the like others, should take. This, moreover, was already demonstrated by the text<sup>4</sup>: "The sons should divide equally...after the parents &c." but it is here expressly declared for the sake of greater perspicuity.

1 Manu, Ch III 42

2. See *Bāṇadāsa* p. 142

3 Ch XXVIII-22.

4. Cf *Yājñavalkya* II 117. p. 1002 ( above ).

## Vīramitrodaya

Now the Author mentions the partition when the father is dead

## Yājñavalkya Verse 117

*Pitroh*, 'of the parents' : *c*, of the mother and the father, *rktham*,  
5 'assets,' *ṛnam cha*, 'debt also,' *urdhram*, 'after them, : *c*, after the death  
of the parents, *sutāh*, 'sons, : *c*, the issue *Samān : śibhajeṣu*, 'should  
divide equally'

*Mātur*, 'of the mother,' the wealth, her *duhitaro*, 'daughters' also,  
equally with the brothers, if a residue remains over after the discharge  
10 of the mother's debts, then they should take The debts, the sons  
alone should pay

*Duhitrānmrite*, 'in default of daughters,' : *c*, in the absence of dau-  
ghters, the daughters' sons, should get the share which would have been  
obtained by their mother So says Manu' "But when the mother has  
15 "died, all the uterine brothers and the uterine sisters shall equally divide  
"the mother's estate To the daughters of those (daughters), to those  
"even according to proportion" "Should divide the property," is what  
follows In the text of Narada "Of the mother, the daughters, in the  
"absence of daughters, the right for an equal share is of the maidens  
20 only.' That has been stated by Brahmaspati' "*Stridhana* shall belong  
"to the children, the daughter also will be a sharer in it, if she be not in  
"coverture, the married, however, gets just a trifle as a mark of honour'  
'To the children, : *c*, to the sons 'In coverture' : *c*, married, 'as  
a mark of honour' : *c* resulting as an indication of simply res-  
25 pectful regard 'A trifle such as a cloth &c *Gratama*' "The  
'*stridhana*' property goes to the daughters unmarried and (failing them)  
'to the unendowed' " 'Unendowed' means childless, unlucky, and  
'having a poor husband," so says Ratnakara Manu' "Whatever may be  
'the separate property of the mother, that is the share of the unmarried  
30 'daughter' *Ida dhan* 'separate property,' at the time of marriage,  
received from the father and others *Vasistha*'. "Now the distribution  
'of *dhyā* among brothers And those women who have no children, for  
'them, until after they bear sons. 'women here has connection with  
(the word) 'brothers Similarly of a widow about whom there is an  
35 expectation for a son a share for a brother's wife should be constituted.

On a son being born to her, that share shall belong to the son. Upon a certainty of the absence of a son, however, that portion should be taken by the husband's brothers and the like.

After the father, says Brhaspati : " In his absence, however, the  
"mother shall take an equal (share) to that of a son. The mothers shall  
"take equal shares with these, and the maidens a fourth part." 'Mother'  
i. e., one having sons. 'Mothers' i. e., the step-mothers without sons.  
These are all entitled to a share equal to a son's. Of these, the sister  
i. e., the unmarried daughter ( of the father ) becomes entitled to a  
fourth share in the father's property. This is the meaning. 5 10

Vyāsa : " The childless wives of the father, however, have been  
"declared to be partakers of an equal share." ( 117 )

### Sūlapāṇṭ

The Author mentions partition after the father's death.

Vāṇikya, Verse 117

15

When sons, all are of eminent qualities or of inferior qualifications,  
then after the death of the mother and the father after making equal  
divisions of the father's property as also of the debts, should make the  
distribution

What, moreover, has been said by Menu<sup>2</sup> viz, " Of the eldest, the  
"twentieth (part) shall be the additional share," that has a reference to the  
youngest when of inferior qualifications. In the case of those with high  
qualifications, a prohibition for an additional share having been laid by  
himself viz, " There is no additional share from among ( brothers )  
"equally skilled in their occupations " 20 25

The property of the mother, as may remain after discharging the  
debts, the daughters should make equal ( divisions ) and take. Gautama<sup>3</sup>  
states a special rule : " The Sūdras of the daughters, unmarried as  
"well as the unwedded " ' Unwedded ' i. e., although married, the  
childless, the moneyless, the widowed, as also the unlucky. 30

In the absence of these, the issue, i. e., the sons, sons' sons, and the  
rest ( 117 )

[Colebrooke Sect. IV]

[Effects not liable to partition.]

(1) The Author mentions things not liable to partition.

Yājñavalkya, Verses 118, 119

3 Without detriment to the paternal estate whatever else is acquired by a man himself, as a present from a friend, as also a nuptial present, shall not belong to the co-heirs (118).

10 Nor shall he, who recovers hereditary property which had been taken away, give it up to (his) co-parceners, nor also what was gained by learning (119).

Mitākṣharā.—(2) *Putravyāvirodhena, without detriment to the estate of the father or the mother, yat swayamarjitam, that which is acquired by a man himself, maṭram, a present from a friend, i. e., obtained from a friend, audwāhikam, a nuptial present, i. e.,*  
 15 *obtained at the marriage, tai na bhavet, that shall not belong, dāyādānam, to the co-parceners, i. e., the brothers. Any property, whatever, which had descended in succession, kramāt, from paternal ancestors, hṛtaṃ and, had been taken away by others, and through inability or any other cause, had remained unrecovered by the*  
 20 *father and the rest, he among the sons, who recovers it with the consent of the rest, tad dāyādebhyo na dadyāt, shall not give up to (his) co-parceners, i. e., to the brothers or the rest, the recoverer alone shall take it (3) Here, if it be land, the recoverer takes the fourth part, but the remainder, however, belongs to all equally. as says Śaṅkha "If one alone*  
 25 *"recovers land (inherited) in regular succession and which had been "formerly lost, having first given him a fourth part, the rest<sup>1</sup> may*

1 Including the acquirer himself—Balambhatti

The rule here stated "was intended to apply strictly to hereditary property of which the members of the family had been violently or wrongfully dispossessed or adversely kept out of possession, 'or a length of time — "Property unjustly detained which could not be recovered before" is the import of Manu IX. 201," *Punditichy vs Annaswami*, 5 Mad H C R. 150 at 157 See also West and Bahler on Hindu Law, p 71 (3rd Edn.) Accordingly it was held, in *Dajabs vs Trimbal*, 24 Bom 106, where certain family property was allotted to a member of one branch of the family in virtue of a compromise and the same was purchased by a member of another branch with his own money not forming part of the joint family property, that the rule stated in the text here did not apply to such a case.



The author of the *Bhāṣā* gives another reading *सु न तदा* (*na tatha-*) "not thus", and according to this reading donations pure and simple will be excluded from the common partible property. Even there the Author notices the reading given and adopted in the text here. (See *Bhāṣā* Sk p 144 ll 19-20) कश्चिन्नानि पाठ

place understood, even what is obtained as a gift,<sup>1</sup> without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, it (i.e., the text) need not have commenced by specifying "gifts from friends," "nuptial presents" and other similar acquisitions.

\* Page 80.

(8) It may be urged that the enumeration of friendly gifts and similar acquisitions is pertinent, as showing that gains are exempt from partition, even though obtained at the expense of the patrimony. To this the reply is :  
 An Objection Were it so, it would be inconsistent with well-established usage,<sup>2</sup> and also would contradict the text of Nārada<sup>3</sup> in regard to gains of science, viz., "He, who maintains the family of a brother while he was acquiring learning,<sup>4</sup> shall take a share in the gains of learning, be he ever so ignorant (himself)." Moreover, the definition of wealth, not participatable, as being acquired by learning is propounded by Kātyāyana<sup>5</sup> thus : "that wealth

1 प्रतिग्रह (Pratigraha)—is a gift pure and simple

2 समया—विद्याया "the received practice of unerring persons." Colchbrooke.

3 Ch XIII 10

4 विद्याया विद्वत्—विद्याया is to acquire—a free translation would be—while he was receiving education. The meaning is that such knowledge would not be knowledge acquired exclusively by the acquirer alone, but jointly with the help of a brother who took care of his family. And this is a fair rule.

5 This definition of Kātyāyana is not exhaustive. See *Durga Das Joshi vs Ganesh*, 32 All 305 at p 312 and also observations in Ghose's Hindu Law, Second Ed. p 520 521. The result of the rulings on this text is—that the fruits of an ordinary elementary education could not be regarded as the gains of science acquired at the expense of ancestral wealth. *Matharam vs Petarchand*, 20 Bom L R 568, 45 I A 41.

See *Pandey Vaid Chetty vs Surya Chetty*, 1 Mad 263 s c 4 I A 100-116. *Lachman Kuar vs Debi Prasad*, 20 All 435 approving *Lalshaman vs Jambhalai* 6 Bom 226 and *Krishna vs More* 15 Bom 32.

The detriment to the paternal wealth must be of an appreciable character, the mere fact that some patrimonial wealth was used for some time will not convert self-acquisition into a joint property. *Bachcha Kunwar vs Dharma Das*, 28 All 347.

Gains of prostitution were held to be self-acquisition. *Balogam vs Suorman*, 4 Mad 330. A Vaki's gains were also held to be his self-acquisition. *Durvasulu Gantharaidu vs D Narasimmaiah*, 7 Mad. 47. See also *Dhanukdhar Lal vs Ganpat Lal* 10 Cal 122 and *Ahagurthabai vs Sudakhe*, Bom H C F J. (1880) page 126.

' which is gained by means of learning acquired from another with the  
 "help of maintenance received from strangers is termed acquisition  
 "through learning" (9) Moreover, if the expression "without  
 "detriment to the paternal estate" be taken as a separate clause, any-  
 thing obtained by gift would be exempt from partition contrary to  
 established usage (10) This very thing has been made clear by  
 Manu: "What one acquires by his labour without using the patri-  
 "mony, he need not give up to the co heirs, nor what he has gained  
 'by science" (11) *By labour*—by service, war, or the like

(12) Indeed it is unnecessary to declare, that effects obtained

as presents from friends, and similar acquisitions  
 made without using the patrimony, are exempt  
 from partition, since there was no rule directing a partition (of these)  
 It is a well known rule that what is acquired by one belongs to him only  
 and to no other person While a prohibition (necessarily) implies a  
 possible<sup>1</sup> supposition of the contrary

(13) Here a certain writer suggests the existence of a previous  
 supposition thus: 'Whatever property the eldest acquires after the  
 'father's death a share of that belongs to the younger brothers pro-  
 vided they have duly preserved learning," by interpreting this text,<sup>2</sup>  
 to mean—that 'if the eldest, youngest, or middlemost (acquire property)  
 whether after the death of the father or when he is not dead' (a share  
 shall accrue) to the rest whether younger or elder' grounds do exist  
 for inferring a supposition that gifts from friends and the like are  
 liable to partition, whether the father be alive or dead, and so this<sup>3</sup> is  
 prohibited—

(14) The argument is erroneous Here there is no prohibition  
 of anything arising by inference, but an explana-  
 tory<sup>4</sup> repetition of what was demonstratively true

The answer

1 Ch IX 206 Lord Sumner has summed up the entire case law in *Coltich v Hulse* 48 I A 162 See Act XXX 1930 under which all self acquisitions have been made indivisible The Act has according to S 2 (b) retrospective effect

2 अक्षरार्थः—or things अक्षरार्थः—are things previously known or assumed as established

3 Of Manu Ch IX, 204

4 i.e. the rule which may be set up as arising from inference or implications

5 अक्षरार्थः—An explanatory repetition of or reference to what is already men-  
 tioned

for most of the texts in this chapter are merely<sup>1</sup> repetitions of what is already well known to the world

- (15) Or you may be satisfied with considering this as an exception to what is suggested by the text 'All the brethren shall be  
 0 "equal sharers of that which has been acquired by them in concert"  
 And it is therefore a mere error to deduce such a suggestion from the word 'eldest' and the like in the text<sup>2</sup> before cited 11: "What  
 "ever property the eldest acquires after the father's death &c"  
 Therefore this passage must be interpreted as an exception to the  
 10 general doctrine, deduced from texts concerning gifts from friends and the rest 11 that they are exempt<sup>4</sup> from partition both before the father's death and after his demise

- (16) So, other things exempt from partition have also been  
 15 enumerated by Manu<sup>5</sup> 'Clothes, a vehicle an ornament, cooked food, water and women (property intended for acts which help) the acquisition<sup>6</sup> and preservation of property as well as the common way, are declared not 'liable to partition' (17) The indivisibility attaches only to clothes which are not worn What is worn by each  
 20 person belongs exclusively to him As to what was worn by the father, these should be given by the brethren partitioning after (the death of) the father, to the Br hmana who partakes of the food at his obseques As says Brhaspati<sup>7</sup>, The clothes ornaments, bed, and similar articles belonging to the father, as also his vehicle and the

1 लोचसिद्धिर्देव अत्रादकारि—Balambhatta thus explains the two qes — 'The first excludes the suggestion that it was established by the rule of Sastra and the second excludes the suggestion of a prohibition

2 Of Brhaspati Ch XXV 14 —Balambhatta

3 1 1 The text of Manu IX 204 cited above at p 1011

4 There is a mistake in the print of the Sanskrit on page 80 l 16 Instead of वा विभाजयेत् read वा विभाजयन्

5 Ch IX 219

6 वा is the acquisition of something not in the possession of the owner (अप्राप्त्य अगम्य) and अय is the preservation of that which has been acquired (अयय अगम्य) As sacrifices and other pious acts further such acquisitions and preservations Colebrooke has translated the expression as sacrifices and pious acts This term has been explained by Vijnanesvara himself further on (see p 1014 ll 9 26)

7 Edmont *Shastaram Bullashas va Waman Gopal* 47 Bom 389

8 Ch XXV 85

"like, should be given, after honouring him<sup>1</sup> with fragrant drugs and  
"flowers to the person who partakes of the funeral repast." But new  
clothes are indeed subject to distribution

(18) *Aśvādā* i.e. the means of conveyance, such as, horses lit-  
ters and the like. Here also, that on which each person rides, belongs 15  
exclusively to him. As for the father's (it should be disposed of)  
similarly as the clothes. If the horses and the like be numerous, they  
must be distributed among co-heirs who live by the sale of them. If  
there cannot be a division on account of the unevenness of the number,  
they belong to the eldest, *Vide* the text of Manu. "Let him never 10  
"divide a single goat or sheep, or a single beast with uncloven hoofs,  
'a single goat' or sheep it has been prescribed, belongs exclusively to  
'the eldest' (19) As to ornaments also, that which was worn by each  
person is exclusively his. What was not worn, is common and is  
indeed liable to partition. 'Such' ornaments, as are worn by 15  
'women during the life-time of their husband, the heirs (of the  
"husband) should not divide among themselves, those who divide  
'become degraded." By specifying particularly 'such ornaments as  
"are worn" it appears that those which are not worn are liable to a  
division (20) *Cooked food*—such as boiled rice, sweet cakes and the like— 20  
that also is exempted from partition (and) should be consumed accord-  
ing as circumstances allow (21) *Water* i.e. a reservoir of water,  
such as a well and the like. And that being uneven,<sup>2</sup> must not be  
divided by regard to its value, but is to be enjoyed by turns.<sup>3</sup>  
(22) *Women*, i.e., *Dāśas* when uneven, must not be divided 25  
by (regard to) the value but should be made to work by turns

1. Colebrooke translates *them* meaning that the worship with fragrant  
drugs and flowers is to be offered to the things given and not to the person to  
whom they are given. It is better that the worship is taken to be offered to the  
recipient of the things than to the things themselves.

2. Ch. IX 119

3. Kulluka and other commentators of Manu add that not even the price of  
such is divisible. *येदृशेन अस्माकं तु ननु यद्वाच्यमस्ति न विधीयते वा ननु न विधीयते।*

4. Manu IX 100

5. विधन् 'incommensurate' 'indivisible in equal parts' would give an  
accurate idea.

6. See *Corral* vs *Tamrak* 36 Bom 273-277

But women kept<sup>1</sup> in concubinage (by the father), such as adulteresses<sup>2</sup> and others, although even in number, must not be shared by the sons, *vide* the text of Gautama<sup>3</sup> "Nor shall there be a partition of "women connected (with the father or other members of the family)."

- 5 \*Page 81 (23) The term *Yogakṣhema* is a conjunctive compound word made of (the two words) *Yoga* and *Kṣhema*. By the word *Yoga* is signified a cause of obtaining something not already obtained—*i. e.*, a sacrificial<sup>4</sup> act to be performed with fire consecrated according to (the rules of) *Śruti* and *Smṛti*.
- 10 By the term *Kṣhema* is denoted an auspicious act which becomes the means of conservation of what has been obtained, such as the giving of alms elsewhere<sup>5</sup> than at the altar, or the making of a tank or a garden and the like. Both these, though ancestral, or though accomplished at the charge of the patrimony, are indivisible as *Laugākṣhi* declares: "The learned have named a conservatory act *Kṣhema*,  
15 "and a sacrificial one *Yoga*; and both these are pronounced indivisible, "as also the bed and the seat." (24) Some hold, that by the compound term *Yogakṣhema*, those who effect sacrificial and conservancy acts are intended *i. e. q.* the king's counsellors, the stipendiary priests, and the  
20 rest. Others say, parasols, cow-tails weapons, shoes and similar things, are meant. (25) *The Commonway*, or road of ingress and egress to and from the house, garden, or the like, is also indivisible. (26) As to the exclusion of land from partition as stated by *Usana*s (in the text) "sacrificial gains land, written documents, prepared food, water,

1 असह्य—This *śloka* occurs later on at II-290 and *Vijñāneśvara* explains it thus "A female slave kept in the house and restrained from having intercourse with other men as a safeguard against any breach in the service" दास्य स्तमिता शुभ्रादानीन्तुदासाश्च गृहे एव स्थानमभिधेयं पुत्रवत्प्रभोजनं निवृत्त अपरुद्धा. Also see *Mat. Hāndarī vs Naradā*, 1 Luck. 184, and *Ājñāśikṣā vs Dāś Nagubh*, 53 I A 153

2 स्त्रीविप्रायः See *Nārada* CB XII 49-53

3 Ch XXVIII, 47

4 योगदान-योग is obtaining something not secured (अप्राप्त्य साधनम्) and क्षेम is the preservation of that which has been secured (प्रसूय परिग्रहम्)

इष्टपूर्त—The two kinds of acts which are the means of acquisition and preservation are called इष्ट and पूत and are thus defined

इष्ट—अग्निदात्र तत्र सत्यं देदानां चैव दातव्यम् । आतिथ्यं वैश्वदेवञ्च इष्टमित्यभिधीयते ॥

पूतं—वासीरूपतडागादिदेवतापूजनादि च । अक्षयदानमात्रम् पूतमिति परिधीयते ॥

० बहिर्विनिर्माणम् "Erecting an outer sacred wall" would also be another way of translating it and may suit the context

6 नान्यम्—Colebrooke translates it as "clear"

"and women, are indivisible among kinsmen even to the thousandth  
 "degree," that has a reference to sons of a *Brāhmaṇa* by women of the  
*Kṣatriya* or other castes, *Vide* the text<sup>1</sup> "Land obtained by accept  
 "ance of donation, must not be given to the son of a *Kṣatriyā* or of  
 "any other wife of an inferior tribe, even if the father give to such  
 "sons, on his death, the son of the *Brāhmaṇ* wife may resume it'  
 (27) *Sacrificial gains*, i.e. acquired by officiating<sup>2</sup> at religious sacrificial  
 performances (28) What is obtained through the father's favour  
 will be subsequently<sup>3</sup> declared exempt from partition The supposit  
 ion, that any thing, acquired by transgressing restrictions regarding  
 the mode of acquisition, is indivisible, has been already refuted<sup>4</sup>  
 (29) It is (thus) settled that whatever is acquired at the charge of  
 the patrimony, is subject to partition But in such a case, the acquirer  
 shall have a double share under the text of *Vasishtha*<sup>5</sup> "And if any  
 "one, among them,<sup>6</sup> has made himself alone an acquisition, he may  
 "take a double portion of it."

#### *Vīramitradaya*

Now the Author states property which is not liable to partition

#### *Yājñavalkya Verses 113, 119*

Without detriment to i.e. without spending the property of the parents, 20  
 what property otherwise, i.e. such as by trading in merchandise and like  
 means has been acquired by himself, what moreover was *matram* 'a  
 friendly gift,' i.e. obtained from a friend, and also *autvithkam* 'nuptial  
 i.e. obtained at a marriage, *fat*, 'that, is not liable for distribution among  
 other *ddyddāndat*, 'co-parceners'. Even property which had descended 25  
 in succession from the ancestors, such as the father, grandfather, &c.,  
 and having been taken away by others, and was not recovered by the  
 father &c. owing to incapacity, the one who recovers by his own capacity,  
 such property he should not give to the co-parceners That has been  
 declared by *Kātyāyana*<sup>7</sup> "With the help of maintenance" preferred by 30

1 Of *Bṛhaspati* Ch. XXV 39—*Balambhatta*

2 *यजन* (causal) i.e. by causing a sacrifice to be performed by another

3 II 123 (1) 4 See p. 937 II 20 etc 5 Ch. XVII 51

6 i.e. brethren separating

7 In a recent case a special (half) share was given to a member in view of his  
 important services to the family *Asa Thachari vs Aravindaswami* (1938) Mad. 410

8 Verse 867

“strangers when the learning was acquired elsewhere, wealth obtained on  
 “account of such learning is termed acquisition through learning.” Here  
 also, according to *Prakāśa*, the basis of indivisibility is the absence of any  
 connection with the paternal estate, that is not proper; because the  
 5 fault of uselessness would arise by the separate mention.

This, moreover, is not liable to partition when (his) family is not  
 maintained by the co-parceners during the period of the acquisition  
 of learning by him; if not, it is certainly divisible, vide this text of  
*Kātyāyana*¹: “He, who maintains the family of a brother while he was  
 10 “acquiring learning, shall take a share in the gains of learning, be he  
 “ever so ignorant (himself).”

By the use of the first *cha* is indicated what was obtained respect-  
 fully at the time of the *Madhuparka* (reception) as stated by *Manu*.  
 By the use of the word *cha* a second time, however, are added “What  
 15 “was given by the grandfather, or by the father out of affection, that  
 “should not be taken away from him, as also that which may have been  
 “given by the mother”, as stated in this text of *Vyāsa*, as also that which  
 the Author will state hereafter. By the use of the word *eva*, ‘only’, twice,  
 are excluded (both those lands) by regard to their having no connection  
 20 with the paternal wealth. By the use of the word *tu*, ‘however’, the co-  
 operation of any other co-parcener in the recovery is excluded. (118, 119).

### Śūlapāṇi.

The Author mentions property not liable to partition  
*Yājñavalkya*, Verse 118

25 Without injury to the paternal estate, by husbandry and like other  
 means, what has been acquired elsewhere, acquired through friendship, or  
 received at marriage, that is not capable of distribution among the  
 sharers (118).

*Yājñavalkya*, Verse 119

30 Property descended from the father, grand-father &c., and lost by  
 the father through the absence of strength, he who recovers it back, need  
 not give it back to the sharers if he is unwilling. Similarly what is  
 gained through learning he should also not give. *Kātyāyana* mentions  
 gains of learning: “With maintenance offered by another, when a  
 35 “man acquires learning, what is obtained in due course with this, that is  
 “called gains of learning” (119).



(30) The Author propounds an exception to this rule

Yājñavalkya, Verse 120 (1).

But if the Common stock be improved, an equal division is ordained.

Mitākṣharā :—(31) Among unseparated brethren, sāmānyarthasya, *if the common stock, samutthāne, be improved, i. e., augmented by any one of them through agriculture, commerce, or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.* 5

### Vīramitrodaya

To this the Author mentions an exception

10

Yājñavalkya, Verse 120 (1)

In the money-earning business carried on by all the brothers together in common, however, such as in the form of agriculture, trading in merchandise &c., all have an equal share. By the use of the word *tu*, 'however,' the Author discriminates the indivisibility in the case of acquisitions made without the use of the paternal wealth. 120 (1). 15

### [ Colebrooke, Sect. V. ]

[ Equal rights of father and son in ancestral property. ]

(1) The distribution of the paternal estate among sons has been shown. The Author next propounds a special rule concerning the division of the grandfather's effects by grandsons 20

Yājñavalkya, Verse 120 (2).

Among claimants by different fathers, the allotment of shares shall be by regard to the fathers.

Mitākṣharā :—(2) Although grandsons have by birth a right of ownership in the grandfather's estate equally<sup>1</sup> with sons, still the distribution of the grandfather's property must only be adjusted<sup>2</sup> through their fathers and not with reference to themselves. The meaning here expressed is this: when unseparated brothers die, 25

1. *समंशितम्*—Without any discrimination or distinction.

2. *पितृद्वारा*—i.e., by regard to their father through whom they are connected with the remoter ancestor or with the family generally. *द्वारं*—means a door—medium.

“strangers when the learning was acquired elsewhere, wealth obtained on account of such learning is termed acquisition through learning.” Here also, according to *Prakāśa*, the basis of indivisibility is the absence of any connection with the paternal estate, that is not proper; because the fault of uselessness would arise by the separate mention.

This, moreover, is not liable to partition when (his) family is not maintained by the co-parceners during the period of the acquisition of learning by him; if not, it is certainly divisible, vide this text of *Kātyāyana*: “He, who maintains the family of a brother while he was acquiring learning, shall take a share in the gains of learning, be he ever so ignorant (himself).”

By the use of the first *cha* is indicated what was obtained respectfully at the time of the *Madhuparka* (reception) as stated by *Manu*. By the use of the word *cha* a second time, however, are added “What was given by the grandfather, or by the father out of affection, that should not be taken away from him, as also that which may have been given by the mother”, as stated in this text of *Vyāsa*, as also that which the Author will state hereafter. By the use of the word *eva*, ‘only’, twice, are excluded (both those kinds) by regard to their having no connection with the paternal wealth. By the use of the word *tu*, ‘however’, the co-operation of any other co-parcener in the recovery is excluded. (118, 119).

### Śūtapāṇi.

The Author mentions property not liable to partition  
Yājñavalkya, Verse 118

Without injury to the paternal estate, by husbandry and like other means, what has been acquired elsewhere, acquired through friendship, or received at marriage, that is not capable of distribution among the sharers (118).

Yājñavalkya, Verse 119

Property descended from the father, grand-father &c., and lost by the father through the absence of strength, he who recovers it back, need not give it back to the sharers if he is unwilling. Similarly what is gained through learning he should also not give. *Kātyāyana* mentions gains of learning: “With maintenance offered by another, when a man acquires learning, what is obtained in due course with this, that is called gains of learning” (119).

(30) The Author propounds an exception to this rule  
Yājñavalkya, Verse 120 (1).

But if the Common stock be improved, an equal division is ordained

Mitākṣharā :—(31) Among unseparated brethren, sāmānyarthasya, *if the common stock, samutthāne, be improved, i. e., augmented by any one of them through agriculture, commerce, or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.* 5

Vīramitrodaya

To this the Author mentions an exception

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Yājñavalkya, Verse 120 (1)

In the money-earning business carried on by all the brothers together in common, however, such as in the form of agriculture, trading in merchandise &c., all have an equal share. By the use of the word *tu*, 'however,' the Author discriminates the indivisibility in the case of acquisitions made without the use of the paternal wealth. 120 (1). 15

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1. अविभक्तम्—Without any discrimination or distinction.

2. विद्वत्—i. e., by regard to their father through whom they are connected with the remoter ancestor or with the family generally. द्वार—means a door—medium.

leaving<sup>1</sup> male issue and one has two sons, another has three sons and  
a third has four sons, and thus the number of sons (of these) is  
unequal, then the two receive a single share which appertained to  
their father, the other three also take a single share appertaining to  
5 their father, and the (last) four also obtain one share due to their  
father. So, if some of the sons be living and some have died leaving  
male issue, the same method should be observed, the surviving sons  
take their own allotments, and the sons of their deceased brothers  
receive the shares of their own fathers respectively. Such is the  
10 adjustment prescribed<sup>2</sup> by the texts (120)

### Viramītrodaya

Now in the grandfather's property the Author mentions the share  
of the grandsons through different fathers

### Yājñavalkya, Verse 120 (2)

15 Where one has one son, another has four sons, there, two allot-  
ments should be made, and of these one share should be taken by (one  
who is) the only son of his father, while by all the four sons of the  
other together should be taken the other share. By the use of the word  
*tu*, 'however,' it discriminates the shares for the grandsons by their  
20 number 120 (2)

### Śūlopāni

### Yājñavalkya Verse 120

When, of the common stock, there occurs an increase by means of  
agriculture trade in merchandise &c., then the distribution shall be  
25 equal. In such a case the apportionment of an additional share should  
not be made on the consideration that 'he has brought in much more', or the  
like. This is in regard to the unlearned, so says Manu. "If the property  
'belonging to these all of whom are unlearned be acquired by agriculture

1 Int. after procreating sons

2 i. e., This is the meaning of the text: when the claimants are removed by  
more than one degree from the common ancestor, the division shall be by reference  
to the root of each group, and not by regard to the several individual claimants  
themselves. In other words the distribution will be *per stirpes* and not *per Capite*.

This text has been referred to in several cases, see *Gangy vs Chandrahagabes*  
32 Bom at 284 *Kalpotula vs Somappa* 33 Bom at 681 *Dek Prasad vs Thakurial*

1 All at p 111 *Gangy vs Panchandra* 16 Bom at 33, 34

2 Ch IX, 205

"in such a case the distribution shall be equal in the property which is not paternal; this is the rule". 'Agriculture' i.e., tilling the soil. "Not paternal" i. e. in the property other than that acquired by the father.

*Anekputrāṇa*, i.e., those who are the sons of different brothers; of these, although they be even or odd in number, (still,) when the grand-father's property is being distributed, whatever was the share of their father, that alone would be (their share), and not that the determination of the share be distributively for each. (120).

(3) If the father be alive and separate (from the grandfather), or if he have no brothers, (it may be urged that) the grandson would not have a (right to) partition in the grandfather's estate since it has been

An objection anticipated.

10

directed that if the father be deceased "shares shall be allotted in the 'right of the father'; or admitting a partition to take place (it may be urged that) it should be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt, the Author says

15

Yājñavalkya, Verse 121.

Land which was acquired by the grandfather, a corrody, and also chattels; in these the ownership of the father and also of the son is the same.

20

*Mitākṣharā*: (4) *Ubbū*, land, a rice field or other ground. *Nibandhaḥ corrody*, i. e., from each bundle of leaves so many leaves<sup>2</sup>; similarly so many nuts from an orchard of areca<sup>3</sup>—as has been

\* Page 82.

defined<sup>4</sup> (before). *Drawyam*, *chattels*, gold, silver &c.

(5) Such as was acquired by the paternal grand-

25

father, through acceptance of gifts, or by conquest or other means; *tatra pituḥ putrasya cha swāmyam*, in these the ownership of the father and of the son, is universally known,<sup>5</sup> and bearing this in mind

1. शेषाव वेतामहे द्वये विभवे कस्मिन्—which Colebrooke translates as: "a partition of the grand-father's estate with the grandson would not take place."

2. Colebrooke translates this as "from a plantation of betle pepper".—But the original does not specify any kind of 'leaves.' The general word *va* (parta) is used

3. समुच्छ्रित—The word *सम* is not conjoined to the areca tree alone.

4. कस्यकस्य समान् यद्वहते यद्वहति कस्मिन् वारसिकायाश्च पट्टिकालोपपत्तयो इ—हेतुनिर्देशः

5. i. e. in com. on Yājñavalkya *Āchārādhyāya* I. 318 p. 580 H. 4-7.

6. See Telang J. in *Appaji Narhar vs Ranchhunder* 16 Bom. 29 (F. B.) at p. 37 and Sargeant C.J. at pp. 33-34; also *Koreppi vs Santara Narayan* 27 Mad. at p. 312.

a partition takes place; *for*, *hi*, i.e., since, the right is *sadyam*, *the same*, i.e., equal (or alike); therefore it is not that partition can be made only by the father's choice; nor is there a double share for the father. (6) Hence also it is ordained by the preceding text, (II. 120) that

5 "The allotment of shares shall be by regard to the fathers", although the right be equal. (7) The text (II. 111) "when the father makes a partition" relates to property acquired by the father himself. So also the text: "Two shares let the father keep for himself, when making a partition" relates to self-acquisitions. The dependence of

10 sons, as affirmed in the following passage<sup>2</sup>: "While both parents live, the control remains, even though he<sup>3</sup> has arrived at old age", must relate to effects acquired by the father or mother. Similarly the text<sup>4</sup>: "They<sup>4</sup> are not masters, while their parents are living." (8) Thus, while the mother is capable<sup>5</sup> of bearing more sons, and the father

15 retains his worldly desires, even when the father does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son. (9) So likewise, if the unseparated father is making a donation, or a sale, of effects inherited from the grandfather, the grandson has even the right of prohibition. But if

20 the effects were acquired by the father, he has no right of prohibition, as he is dependent on him. On the contrary he must give his consent. (10) Consequently the difference is this: although he has a right by birth in his father's and in his grandfather's property, still, since in regard to the father's property, he is dependent on his father and since the father

25 has a predominant interest as it was acquired by himself, the son must give his consent to the father's disposal of his own acquired property. On the other hand, as regards the grandfather's estate, however, the

1. Of Nārada Ch. XIII. 12. See also Brhaspati XXV. 5.

2. Author unknown. Mr. Colebrooke in a note in his translation remarks that Bīlambhatta assigns it to Manu, but it is not found in the Bīlambhatti (see Collections, vol. 6, p. 152), nor in Manu.

3. Colebrooke translates it as "though they have arrived at old age," meaning the parents; but the reading of the Mītākṣharā is जरायुपि सम्पन्नः—"even though he has arrived at old age"—i.e., the son.

4. [ "They have not power over it—the paternal estate—i.e., while their parents live" must be referred to the same subject. ] Colebrooke Tr.

5. सत्यवयवो मासि—when the mother has the periods of menstruation.

(right of) ownership of both is without a distinction, and (consequently) the right of prohibition also exists' (11) By the text<sup>1</sup>— "If the father recover ancestral property not recovered by his co-heirs, he shall not, unless willing, share it with his sons, for in fact it was acquired by him"—while laying down that if the father recovers property, which had been acquired by an ancestor, and taken by a stranger, but not recovered back by the grandfather, he need not himself share it, against his inclination, with his sons, just as is the case with his self-acquisitions even *Manu* shows that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather.

#### Vīramitrodaya

In regard to the ancestral wealth, on a partition with the father, the determination of the share is not at the pleasure of the father, but for the father a double, and for the sons, there shall be an equal share; so the Author says

#### Yājñavalkya, Verse 121

"*Bhūh*, 'land', or gold and other kind of property, *śubandho*, 'a corrody,' i.e. something settled on by the King, such as, a cess from a ferryman or the like, this, whatever was earned by the grandfather, *talra*, 'there', of the father, and of the son, i.e. of both, *ubhayaṃ sadra-sam stādnyam*, 'the ownership shall be equal', and not that the partition shall be by the father's option alone. This is the meaning.

Indeed: "In property acquired by the grandfather, immovable as well as movable, an equal share has been declared for the father and for the son also", in this text of *Bṛhaspati*<sup>2</sup> (there would) an equal share in contradiction to the text of *Nārada*<sup>3</sup> stated before. But in the text of *Bṛhaspati*, however, the meaning only is that the right to participation for a share is equal, and not the equality of shares also. The word *ca* 'also', follows the word *sadrasa*, 'equal'. By the use of the word *cha* 'and', the Author adds that in the property acquired by the great-grandfather, the great-grandson has also the right of ownership (121).

1. These passages were referred to in the following cases: *Deri Prasad vs Guncanti Koor* 22 Cal 116. *Kalyanda vs Somappa* 33 Bom at p. 681. *Sital vs Madho* 1 All. at p. 397. *Mulayya Chetty vs Sirogiri* 3 Mad. at p. 280.

2. Ch. IX. 209.

3. Ch. XXV. 3.

4. Ch. XIII. 12.

## Śūlapāṇi

## Yājñavalkya, Verse 121

- Nibandha, 'a corrody', such as in the case of a mine &c. granted by the King and the like as a fixed grant of gold, &c. In regard to these, i. e.  
 5 the land &c. of the father and of the son, the right of ownership is equal, therefore, the partition shall be at the desire of the son, and the distribution also shall be equal. So Brhaspati<sup>1</sup>: "In property acquired by the "grandfather, immovable as well as movable, an equal share has been "declared for the father and the son also." (121).

## [ Colebrooke Sect. VI. ]

- 10 [ Right of a posthumous son and of one born after partition. ]

(1) How shall a share be allotted to a son born subsequently to a partition of the Estate? Anticipating this question the Author replies

## Yājñavalkya Verse 122 (1)

- 15 When the sons &c. have been separated, a son who is ( afterwards ) born of a woman of the same Varṇa ( class ) shares the distribution.

- Mītākṣharā—(2) Vībakteṣu, among the sons<sup>2</sup> being separated, one born afterwards, savaṇṣyām, of a wife equal in class, vībhāgabhāk, shall share the distribution. What is distributed, is a distribution. The distribution is of the allotments of the father and mother. He shares that; and so he is a Vībhāgabhāk ( one who is entitled to a share in the distribution ). In other words, he obtains, after ( the demise of ) his parents, both their portions. The mother's portion, however, only if there be no daughter, for it is declared<sup>3</sup> that "Daughters share the  
 20 "residue of their mother's property, after payment of her debts." (3) Sons by a woman of a different tribe, however, receive merely their own proper share, from the father's estate. And as for the mother's property ( they get ) the whole of it.

- (4) The same rule is propounded by Manu<sup>4</sup>: "A son, born after  
 30 "a division, shall take the parental wealth only". The term parental, pitṛyam, must here be interpreted as "appertaining" to both father "and mother", for it is ordained<sup>5</sup> that "A son born before (partition), "has no claim on the wealth of his parents; nor one begotten after "it on that of his brother". (5) The meaning ( of this text ) is this:

1. Ch. XXV. 3. 2. See Dular Kera vs Dular Kanath Master 52 vol. at p. 241.

3. Yājñavalkya II. 118 at p. 1008 II. 5-6.

4. Ch. IX. 216.

5. By Brhaspati Ch. XXV. 18—Bāṇabhaṭṭi p. 154.



one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated; nor is one, born of parents separated,<sup>1</sup> a proprietor of his brother's allotment (6) Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained: "All the wealth which is  
5 "acquired by the father himself, who has made a partition with his  
"sons, goes to the son begotten by him after the<sup>2</sup> partition; those,  
"born before it, are declared to have no right." (7) As for those, how-  
ever, who re-united themselves with the father after partition, the  
son born after partition should share with these the goods of the  
father after his death, as directed by Manu<sup>3</sup> "Or if there are any who  
10 "are re-united with him, he shall share with these."<sup>4</sup> 122 (1)

\*PAGE 83

(8) When the sons have made a partition subsequently to  
the death of the father, how shall a share be allotted to one born  
afterwards? Anticipating this question the Author says

Yājñavalkya Verse 122 (2)

His allotment must be made only<sup>5</sup> out of the visible estate corrected  
for income and expenditure.

Mitākṣharā:—(9) A share allotted for one who is born after a  
separation of the brethren, which took place subsequently to the death  
of the father, at a time when the mother's pregnancy was not manifest,  
is *tadvibhāgaḥ*, his allotment<sup>6</sup>.

(It may be asked) but whence shall it be taken? (So) the Author  
replies: *drīyāt*, out of the visible estate, taken by the brethren. Of what  
sort? *Aya-vyaya-vīśodhitāt*, corrected for income and expenditure. *Āya*,

1. i. e., from their elder children—*Dālamdhattā*.

2. By *Brhatpati* Ch. XXV. 19—*Dālamdhattā*.

3. *Kalgauda vs Somappa* 33 Bom at 684; *Krishna vs. Sani* 9 Mad. 71.

4. Ch. IX 216.

5. Colebrooke translates "His allotment must absolutely be made &c." and in a footnote explains it by a reference to *Subodhini*. *Subodhi*, however, only states that the allotment should be made only from the visible &c. (हरदिन नदिपण इत्यर्थः), premising this by explaining वा as being used in a restrictive sense (सुतवचनपण वा तद्विभागः) —see *Subodhini*, page 53. ll 31-32.

6. His allotment—*विविभागः* i. e., the share of such a one born after partition.

income, is that which is produced daily, monthly, or annually. Vyaya expenditure, is the liquidation of debts contracted by the father. Out of the amount of property, which has been corrected for such income and expenditure, a share should be taken and given as "his allotment."

5 (10) The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts, a small portion should be taken from the remainder of each of the shares respectively, and an allotment equal to their own portions, should (thus) be formed for the son born after partition.

10 (11) This must be understood to be likewise applicable to a nephew who is born, after separation, of a brother<sup>2</sup> who was childless at the time of partition, when the pregnancy of his widow was not manifest. (12) But if the pregnancy be manifest the distribution should be made after awaiting (her) delivery. As says Vasīṣṭha<sup>3</sup>: "Now  
15 (follow the rules regarding) the partition of heritage among brethren. And (let it be delayed) until those widows who are childless, (but are "pregnant") bear sons." This text should be interpreted thus: "Until  
20 the delivery of those widows who are pregnant." 122 (2).

1 मितक्षरं अङ्गुलः i. e., in each distributive share. मितक्षरः is the unit or basic quantity of a share.

2 Nālumhāṣṭhi notices another reading (see p 1551. 4), viz., "अमनसि" which connects it with the wife of the brother—there would, however, be no difference in meaning.

3 Ch. XVII 40—41.

4 Mr. Colbrooke adds the following note to this passage: "The most natural construction of the original text is 'Partition of heritage is among brothers and women who are childless, until the birth of issue.' The authors of the *Kalpavaruṣa-Chintāmaṇi* follow that interpretation and conclude that "a share should be set apart for the widow who is likely to have issue (being supposed pregnant) and when she is delivered, the share is assigned to her son, if she bear male issue; but if a son be not born, the share goes to the brethren, and the woman shall have a maintenance." The author of the *Smṛti-Chandrikā* acknowledges that to be the natural construction of words, but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text nearly as it is explained in the *Mitākṣharā* viz., "Among brothers, who have continued to live together until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known; and does not take place immediately after the obsequies." *Viśveśvara-Bhāṣya* in the *Madana-Pūrijāta* exhibits a similar interpretation: "Partition takes place after awaiting the delivery of widows who are evidently pregnant."

Vīramitrodaya

Now the Author states the share of a son born after partition

Yājñavalkya, Verse 122

*Vibhaktēshu* 'after partition', by the sons, thereafter, *savarṇāyām* *patnyām jātaḥ sūta*, 'a son born of a wife of the same *varṇa*'; *vibhāga* 5  
*bhāḥ*, 'shares the distribution'; i.e. from the property distributed in the partition among all the brothers, excluding the partition added by accretion and also what was spent, in the remaining property he becomes entitled to a share as may be properly due (to him).

If, however, the son born after partition be devoid of any qualifica- 10  
tion, then *driyamātrāt*, 'only out of the visible estate', such as the cow, the buffalo &c. *āyavyaya nūdhāt*, 'corrected for income and expendi-  
ture', of him i.e. the one born after partition, *vibhāgaḥ syāt*, 'shall the allotment be'.

If it be argued that under the text of Nārada: "when the mother 15  
"has ceased to menstruate and the sisters have been married", when there is a probability for (the appearance of) a brother, a partition having been prohibited in terms, how can it be possible for a son to be born after partition? To that the answer is, the desire of the father preponderating, the text of Nārada is set aside, otherwise *there would be the* 20  
*fault* of the text under consideration being with no object (for its application). This text under consideration is in regard to one who at the time of the partition was in the womb.

In regard to one born of the womb which had conceived after the partition, Manu<sup>2</sup> says: "A son, born after a division, shall take the 25  
"wealth of the father only; or those who become re-united with him, he "may have a distribution along with them." The meaning of the word *or*, 'or', is that after the death of the father, he shall take the father's share from those who had re-united with the father.

Bṛhaspati: "In the case of those of the uterine brothers who have 30  
"made a partition with the father, or those who are well provided—such "of those who are born latest, shall take the father's share." Similarly,— "Whatever has been acquired by the father after he had separated from "the sons, all that belongs to the son born after the partition; those born 35  
"before have been declared to be not entitled. As in the case of " (inherited) property, so also as to debts, as also in regard to donations, "pledges and sales, they are each not entitled, excepting as to the "exequial rites and watery oblations." (122).

## Śūlapāṇi

## Yājñavalkya, Verse 122

- If the conception in the womb was not known at the time of the partition, but afterwards a child was born of a wife of the same caste, he shall take a share from all those who partook of a share, as says Viṣṇu<sup>1</sup>: "Sons who have separated from their father, should give a share to one ( who is ) born after the partition "

- As regards the conception after partition, however, Manu<sup>2</sup> says: " A son, born after a division, shall take the father's wealth only ; or those who had become re-united with him, he should share along with these."

*Dṛṣṭvāśeṣa*, ' or from the visible ' &c., i. e. what was not available at the time of the partition, that after being corrected for income and expenditure, whatever is found as the residue from such property, he gets as his own share. ( 122 ).

- ( 13 ) It has been stated that a son born after partition takes the whole of his father's goods as well as of his mother's. But, here, if the separated father or mother affectionately bestow ornaments or other present on a separated son, then in such a case the gift should not be resisted by the son born after partition, nor, even, if actually given must it be resumed. So the author says

## Yājñavalkya, Verse 123 ( 1 ).

The wealth which had been given by the parents to one, belongs to him.

- Mitākṣharā:— (14) By the mother and the father, being separated (from their children), to a son separated before, what is given, such as an ornament &c., belongs exclusively to him; and does not become the property of the son born after partition. (15) By a parity of reasoning, what was given to any one, even before partition, appertains solely to him. (16) So when there is no son born after partition, and the brethren divide the effects of the separated parents after their death, what had been given to each of them, belongs severally to each and is shared by none other. This must be understood.

[ Colebrooke Sect. VII. ]

[ Shares allotted to provide for widows and for the nuptials of unmarried daughters. The initiation of the uninitiated brothers defrayed out of the joint funds ]

(1) When a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed by the text<sup>1</sup>: "If he make the allotments equal, &c." With a view to point out an equal participation of the mother even when the partition<sup>2</sup> takes place after the death of the father, the Author says

Yājñavalkya, Verse 123 (2).

Of heirs dividing after (the death of) the father, let the mother also take an equal share.

Mitākṣharā:—(2) *Vibhajātām, of heirs dividing, pītūrūrdhwaṃ, after the father, i.e., after the death of the father, mātā apī barei, let the mother also take, anāṃ, a share, samam, equal, to that of her son; provided no stridhana has been given. But if any had been given she is entitled to half a share, as the Author will mention<sup>4</sup> later on.*

1 See Yājñavalkya II 116 (Sk p 77 ll 9-10, Eng Tr. p 907 ll. 14-15)

2 See *Dular Koori vs Dwarkanath Misser* 32 Cal 241 and *Balti Kumar vs Janak Kumar* 33 All 118, where at p 121 the Court observes "This (i.e., this passage in the text allowing a share to the mother) in our opinion implies an actual division of the family property, that is, a completed partition under which there is a division of interest as well as separate possession. We do not think that a mere severance of interest where no actual division of the property takes place confers on the mother a right to a share equal to that of her son." See also *Shantayya vs Mallappa* 40 Bom L R 1020 at p 1038.

And in *Shet Narain vs Janak Pershad* 34 All 505, the same court observes at p 509 after referring to this text. "It is thus manifest that Yājñavalkya and the author of the *Mitākṣharā* make a distinction between partition during the life-time of the father and partition after his demise. In the former case a share is allotted to the wife of the father, in the latter, to the mother of the sons effecting a partition." See also *Pratapmal vs Dhanabati* 63 I A 33 *Karja vs Anant* 42 Bom 535.

3 For a discussion as to the persons indicated by the word mother, see *Hari vs Channammal* 8 Mad 116 at p 121 &c. *Husken Sab vs Devappa* 34 Bom. L R. 1325. A step mother, *Hari Narain vs Bahadur Nath* 35 All 82, and even when the father is living *Pratap Singh vs Dalip Singh* 52 All 696 (T. B.), a grand mother, *Kanham Lal vs Ganes* 47 All 127, but contra, see *Sammobai vs Varadai* 51 Bom 417, and in *Husken Sab vs Devappa* 34 Bom 468, a step-grand mother, were held to be entitled to a share.

4 Yājñavalkya II. 116.

## Viramitrodaya

In the clause as "also what was obtained by learning", with a view to point out the additional property implied in the word *cha*, 'as also', the Author states that one separated cannot obtain property from a brother to whom it has come as an affectionate gift

Yājñavalkya, Verse 123.

*Pitr̥bhyām*, 'by the parents', this (expression) is indicative of the paternal grandfather also.

At a partition after the death of the father, not only that the brothers are entitled to a share, but their mothers also, and also the step-mothers—the co-wives (of the father), so the Author says, *Pituh*, 'of the father,' *ūrdhvaṃ*, 'after' i.e. after the death. By the word *api*, 'also', are included the step-mothers (123).

## Śūlapāṇi

Yājñavalkya, Verse 123

By the mother and the father whatever has been given to their son, daughter, and the rest, such as an ornament &c. that belongs to him alone even after the death of the father; that should not be distributed.

After the death of the father, when the sons make a partition, the mother also shall take a share equal to that of the son. So following the rule as to a sonless man, says *Brhaspati*: "In his absence, however, the mother gets a share equal to those of the sons". *Yyāsa* states a special rule: "The sonless wives of the father have been declared to be entitled to an equal share, as also the grandmother; all these have been declared to be equal to the mother." (123).

(3) If any of the brethren be uninitiated<sup>1</sup> when the father dies, (it may be asked) who is competent to complete<sup>2</sup> their initiation? So the author says

Yājñavalkya, Verse 124 (1)

The uninitiated (brothers), however, should be initiated by these brothers who have been initiated before.

*Mitākṣharā* :—(4) *Bhrātṛbhyā*, by the brethren, who make a partition after the death of the father, *anāskṛtāḥ*, the uninitiated, brothers *sanskṛyāḥ*, should be initiated, at the charge of the common estate.

1. Ch. XXV. 61.

2. As to what is the meaning of initiation in the case of males and females see—*Sundarbai vs Shir Narayan* 32 Bom. 81, at pages 86, 87—90 referring to and discussing the case in 27 Mad. 206. See *Subhaya vs Ananta Narayan* 63 Mad. 84, where expenses for a daughter's marriage were allowed in a suit between a father and sons. But marriage expenses of a male member cannot be allowed. See *Gowd vs Srinivas* 30 Bom. L. R. 457.

3. *अभिहितः के तदभिहितः*? Tr. "who has the authority" (to perform the ceremonies of these)

(5) In regard to unmarried sisters, the Author states a special rule

Yājñavalkya Verse 124 (2)

And the sisters also, but by giving them, as an allotment, the fourth part of his own share<sup>1</sup>

Mitāksharā —(6) The meaning of the above passage (is this) Bhagynāscha, and the sisters also, who are not (already) married must be disposed of in marriage by the brethren By doing what? By contributing a fourth<sup>2</sup> part of their own allotments

\* PAGE 84

Thus it appears, that daughters also participate after the death of their father Here in saying "from his own share" the meaning is not that a fourth part shall be deducted out of the portions allotted to each brother and shall be so contributed, but that the daughter of (a wife of) a particular caste shall be allowed to participate for a quarter of such a share as would be assignable to a son of the same caste as herself The sense expressed is this if (eg) the maiden be (the daughter of) a *Brāhmanī*, a fourth share becomes hers of so much as is (likely to be) the amount of an allotment for a son by a *Brāhmanī* wife.

(7) Thus, for example, if a certain person had one wife only, only a *Brāhmanī*, and one son and one daughter, then in such a case, the whole paternal estate should be divided into two parts and one such part be subdivided into four, and the quarter share being given to the girl, the residue shall be taken by the son. When, however, there are two sons and one daughter, the whole of the paternal estate should be divided

1 (1) Applying this text, among others, the Calcutta High Court held in *Churaman Sahu vs Gopa Sahu* 37 Cal 1 that 'it was competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of the immovable property of her husband to her daughter on the occasion of the daughter's *garbha* ceremony (at which the marriage of the daughter would be completed and consummated) and that such a gift was binding on the reversionary heirs of her husband'

Recently the Bombay High Court held in the Full Bench Case of *Jyotsacharya vs Fendake* 37 Bom 201 at page 203 that this text did not justify the settlement of immovable property by an adopting widow in favour of her daughter attaining majority and assented to by the natural father of the adopted boy at the time of adoption.

into three parts, and one such part be sub-divided into four, and the quarter having been given to the daughter, the remainder shall be shared by the two sons. If, however, there be one son and two daughters, the father's property should be divided into thirds, and<sup>1</sup> one (of these) shares be severally sub-divided into quarters, and having given two (quarter) shares to the two daughters, the son shall take the entire residue. Thus should be applied the rule in the case of brothers and sisters of a like caste whether of an even or uneven number.

(8) When, however, there is one son of a *Brāhmanī* wife, and one daughter of a *Kṣatriyā* wife, then the paternal estate should be divided into seven parts, and the parts which would be assignable to the son of a *Kṣatriyā* wife should be divided into four parts, and having given such a fourth part to the daughter of a *Kṣatriyā* wife, the residue, the son of the *Brāhmanī* shall take. Or, if there be two sons of a *Brāhmanī* wife, and one daughter by a *Kṣatriyā* wife, the father's estate shall be divided into eleven parts, and from these, the three parts which would be assignable to a son by a *Kṣatriyā* wife should be divided into quarters, and having given such fourth part to the daughter of the *Kṣatriyā* wife, the entire residue, the two sons of the *Brāhmanī* wife shall equally divide and take. Thus the mode of distribution should be inferred in all cases of even or uneven number of brothers and sisters of different castes.

(9) Nor is it right to interpret the text "by giving the fourth part of his own share &c." as signifying giving money, sufficient for her marriage, by considering the word 'fourth' as having no special significance, as this would contradict the text of Manu: "To the Maiden sisters, let the brothers give (portions) out of their own allotments respectively, each out of his own share a fourth part; those who refuse to give, shall become degraded." (10) The sense of this passage is as follows: Brothers of the *Brāhmana* and other tribes should give to their sisters of the *Brāhmana* and other tribes respectively portions out of their own allotments as prescribed (for them)

1 Mr. Colebrooke has—"and two shares severally sub-divided into quarters." As, however, the quantity of the distributive share allotted comes to be the same as given here, this variation in the reading does not make any difference.

2 अर्थवश-*artha* is अर्थवश-*artha* meaning, intention, purpose.—It always signifies a particular purpose. This is explained in Sanskrit by the significant word शक्ति-*śakti* "power or force."



having regard to their tribe—i. e., under the text<sup>1</sup> to be mentioned subsequently viz. "a *Brāhmana* should take four shares" &c., and should give to each a quarter out of their respective allotments. And it is not meant that a quarter should be given by deducting it from one's own share; but that to each maiden should be given severally the quarter of a share ordained for (a son of) that particular class. The mode of adjusting the division when the castes are dissimilar, as also when the number is uneven, has already been stated. And the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin in the text<sup>2</sup>: "Those who 10  
"refuse to give shall become degraded."

(11) If it be alleged, that here also, the mention of a quarter has no special significance, and the allotment of property sufficient to defray the expenses of the nuptials is all that is meant to be expressed; the answer is, no; there is no support 15  
The answer for the assertion that the allotment of a quarter of a share has no special significance in both<sup>3</sup> the *Smṛtis*; and, moreover, the withholding of it is pronounced to be a sin.

(12) As for what is objected by some, "that a sister who has 20  
Another objection answer "many brothers would be greatly enriched if "(it be understood that) the (text prescribing an) "allotment of a fourth share were positively meant, "and that a brother having many sisters would be entirely deprived of "wealth," such a conclusion already stands obviated by what has been said before. It is not here directed that a quarter shall be deducted out 25  
of the brother's own share and given to his sister, whence any such consequence should arise. (13) Hence, the interpretation of *Medhātithi*, *Asahāya*<sup>4</sup> as well as of other writers is square and accurate, and not that of *Bhāruchi*. (14) Therefore, after the death of the father, a maiden is also entitled to a share. But if it be before, she obtains that 30  
only, whatever it be, which her father gives, since there is no special precept respecting this case. Thus all is unexceptionable.

1 Yājñavalkya II 125 p 1033 2 Of XI Manu 116 3 i. e. in text of Yājñavalkya & Manu

4 Here there is a mistake in the print at p 84 l 27 for असहयाय read असहाय Colebrooke translates असहाय as 'who has no compeer' The Commentator of that name, however, is well known

**Vīramitrodaya**

In regard to a partition after the death of the father, the Author states another special rule

**Yājñavalkya, Verse 124**

- 5      The brothers for whom the sacraments of initiation, marriage &c have not been performed, should have the sacraments performed by the brothers on whom the rites have been performed.

- 10      *Bhaginyāscha*, 'the sisters also', *nijāt*, 'of one's own', *anśat* 'from the share, of the son in accordance to his share, *datvā*, 'by giving', 'share, *sauśhrīd*, 'should have the sacrament performed on them.' By the first use of the word *tu*, 'however', is excluded any limitation as to the quantity of wealth for a ceremony, and by its use the second time, (is excluded) its absence.

- 15      If the fourth of a share is not sufficient for the performance of the marriage ceremony of a sister, whatever is necessary for the marriage, so much wealth should be contributed by all in proportion to the property. "Of the unmarried damsels, they should perform the "ceremony (of marriage) according to the wealth," vide this text of *Viṣṇu*,<sup>1</sup> which has been included by the Author (124)

20      **Sūlapāṇi**

**Yājñavalkya, Verse 124**

- 25      *Pūrvamśhrīdāt* 'By the brothers of whom the sacraments had been performed', *pitururdhāt*, 'after the (death of the) father', from the parental wealth also 'the unmarried' *asauśhrīd* brothers, should have performed for them the rites such as the *yajakarma* and the rest

- 30      *Bhaginyopi*, 'The sisters also', by giving a fourth part from one's own (share of the) property, with (the use of) that wealth itself, should have the ceremony of marriage performed for them *Bṛhaspati* ' (in the text) "Their mothers shall get an equal share, and the daughters, the fourth of "a share", has stated a fourth of a share of the paternal estate, that also has been stated as for the purpose of a ceremony

- 35      When however, a marriage is not possible with a fourth of a share *Devala* says "To the daughters also should be given wealth for their "marriage, of a son less man, however, the daughter born according to "the law of the *Āryas*, shall take the wealth like a son " 'According to one's own wealth', so says *Viṣṇu*" "Of the unmarried daughters the "ceremony should be performed according to the (magnitude of the) wealth" (124)

[ Colebrooke Sect VIII. ]

[ Shares of sons belonging to different tribes. ]

(1) In this manner by the text<sup>1</sup> "If the father make a distribution &c." the mode of adjustment of a distribution among brothers of equal caste, whether made with each other or with their father, has been pronounced. The Author now describes the ( mode of ) partition among brethren dissimilar in class

Yājñavalkya, Verse 125.

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The sons of a *Brāhmaṇa* ( in the several tribes or *varnas* ) have four shares, or three, or two, or one respectively according to the tribe ( or *varnas* ) ; the children of a *Kṣatriya*<sup>2</sup> have three portions, or two, or one, and those of a *Vaiśya*<sup>3</sup> take two parts or one.<sup>4</sup>

Mitākṣharā—( 2 ) Under the text<sup>1</sup> " Three ( wives ) respectively according to the tribe of each &c." it has been pointed out that a *Brāhmaṇa* may have four wives, a *Kṣatriya* three, a *Vaiśya* two, and a *Sūdra* one. In such cases, ( the expression ) *Brāhmaṇātmejāh*, the sons of a *Brāhmaṇa*, means the sons begotten by a *Brāhmaṇa*.

( 3 ) *Varnaśah*, according to the tribes or *varnas* of each. By the word *varna* are indicated women of the different classes such as the *Brāhmaṇa*, and others.

The termination *Sas* (सस्), subjoined to a noun in the singular number and locative<sup>5</sup> ( or other ) case bears a distributive sense conformably with the grammatical rule<sup>6</sup> viz.

"The affix *sas* (सस्) comes optionally after crude forms denoting numbers and words denoting units of a coin in the singular number, when a distributive sense is to be expressed and the word is a *Ākraka*<sup>7</sup>"

1 Of Yājñavalkya II 114 p 994 before 2 &c under similar circumstances

3 This verse is the further development of the law as to intermarriage as laid down in verse 57 of the *Āchārādhyāya*. Mr Maendlik in a note to this passage observes—"Marriages with women of a dissimilar class have been prohibited in this *Āch* age" and refers to Nirṇayasanda III citing a text of *Nārada* "द्विजमण्डपे कर्मादयमवधाय" Tr "so also the marriage of a deity with a maiden of a dissimilar class." He observes in conclusion—"the text of Yājñavalkya has therefore no application now"

4 *Āchārādhyāya*, verse 57 p 163 above

5 अविभक्तवचन—*Kāraka* (कारक) is the relation subsisting between a noun and a verb in a sentence, or between a noun and other words governing it. There are six such *Kārakas* belonging to the first seven cases excepting the genitive, viz, (1) कर्त्तृ (2) कर्म (3) काल (4) समान, (5) समान and (6) अवस्थान ( for the locative )

6 — "सङ्ख्येकवचनं वीकवचनम्" —Pāṇini 6-4-43 सङ्ख्या = words denoting numbers — that by which the sense of unit is expressed

And hence, sons begotten by a *Brāhmaṇa* (on women) in the several tribes, shall respectively have four shares, or three, or two, or one, *chatuṣṭridwyekabhāgāḥ syuh*, i.e. they shall be entitled to such shares

(4) The meaning here expressed is this. The sons begotten by a *Brāhmaṇa* on a *Brāhmaṇi* take four shares apiece<sup>1</sup>, similarly those begotten by him on a *Kṣatriya*<sup>2</sup> receive three shares each, on a *Vaiśya*, two each, and on a *Sūdrā* one each

(5) *Kṣatrabhāḥ*, the children of a *Kṣatriya*, i.e. begotten by a *Kṣatriya* on women of the several tribes — for that is here understood, — *tridwyekabhāgāḥ yathākramam*, have three shares, two, and one respectively, in the order of their tribes i.e. the sons begotten by a *Kṣatriya* upon a *Kṣatriya* take three shares each, upon a *Vaiśya* two each, and upon a *Sūdrā* one each. (6) *Vidjah*, those of a *Vaiśya*, i.e. begotten by a *Vaiśya* — for here again the expression *Varnasāḥ* (respectively in the order of their tribes) is understood — have, respectively, two shares or one in the order of their tribes i.e. those begotten by a *Vaiśya* upon a *Vaiśya*, take two shares apiece, and upon a *Sūdrā*, one each. (7) Since for a *Sūdrā* one wife only is allowed<sup>3</sup> to him, he cannot have sons of a different class from his own, partition among his sons takes place in the same manner as has been mentioned before

(8) Although, the expression “shall have four shares, or three, or two, or one” has been used without any restriction, still, it must be understood to relate to (property) other than land obtained by the acceptance of a gift. For it is declared<sup>3</sup> “Land obtained by acceptance of donation, must not be given to the son of a *Kṣatriya* or other wife of inferior tribe, even though their father gave it to them, the son of a *Brāhmaṇa* may resume it when his father is dead”

1 The meaning here expressed may be thus illustrated. Suppose a *Brāhmaṇa* dies leaving behind him four sons born of wives of each class respectively. Then his estate should be divided into 10 shares out of which

4	should be given to the son by the <i>Brāhmaṇa</i> wife
3	“ “ “ “ <i>Kṣatriya</i> “
2	“ “ “ “ <i>Vaiśya</i> “
1	“ “ “ “ <i>Sūdrā</i> “ and so on

2 *Mann III 13* The text is *सुद्रेण स्यात्सुद्रेण*—“A *Sūdrā* woman only must be the wife of a *Sūdrā* man.”

3 By *Bṛhaspati*, Ch. XXV 30 *Bṛāhmanasūtra*

(9) Since 'acceptance of donation' is here expressly stated, land obtained by purchase or similar means appertains also to the sons born of a *Kṣatriyā* or other inferior women. For the son by a *Sūdrā* woman is specially prohibited<sup>1</sup> (in the text): "The son begotten on a *Sūdrā* woman by any man of a twice-born class, is not entitled to a share of land."<sup>2</sup> (10) Now, if land acquired by purchase and similar means did not belong to the sons of a *Kṣatriyā* or *Vaiśyā* wife, the special exception of a son by a *Sūdrā* woman would not be pertinent. (11) As for the text: "The son of a *Brāhmaṇa*, *Kṣatriya*, or *Vaiśya*, by a *Sūdrā* wife is not entitled to a share in the inheritance; whatever his father may give him, let that be his property"—that too relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a *Sūdrā* woman. When, however, no affectionate gift has been bestowed (on him by his father), he participates for a single share.<sup>3</sup> Thus there is nothing contradictory.

### Viramitrodaya

Now the Author mentions the shares of the brothers of different classes

### Vāṇīyavalkya. Verse 125

Of a *Brāhmaṇa* the four sons born respectively of his four wives viz. a *Brāhmaṇi* and the rest *chaturvidhyekabhāḍgapabhāyo*, 'become entitled to four, three, two and one share (respectively)'. Of a *Kṣatriya* the three sons born of his three wives viz. the *Kṣatriyā* and the rest, respectively are entitled to three, two, and one share. Of a *Vaiśya*, however, the sons born of a *Vaiśyā* and a *Sūdrā* wife are entitled to two and one share respectively; this is the meaning.

This, moreover, is in regard to property other than land received by the acceptance of a donation, vide the text: "Land obtained by acceptance of a gift must never be given to the son of a *Kṣatriyā*, or other (wife); even though their father may have given it to them, the son of a *Brāhmaṇi* may resume it after the death of the father."

1. *प्रतिषेधः*—is a prohibition and not a mere exception by omission.  
 2. This also is a text of *Brhaspati* Ch. XXV. 32—see *Bālabhāṭṭi* p. 160 & *Dāyabhāṭṭa* Ch. 2. p. 22  
 3. Of *Mān* IX. 155.

4. Colebrooke adds in bracket (of the movables) 5. Of *Brhaspati* XXV. 30

- As to the son of a Śūdrā wife, what has been stated in the rule as to one share for him, that applies in the case where he does not get what was given to him through affection by the father while living. Otherwise however, "The son of a Brāhmana, Kshatriya, or Vaiśya by a Śūdrā  
5 "wife is not entitled to a share in the inheritance; whatever his father "may give him, let that be his property." According to this text,<sup>1</sup> it should be understood that he is entitled to a share (125).

## Śūlapāṇi

Yājñavalkya, Verse 125

- 10 The sons procreated by a Brāhmana, upon his four wives such as a Brāhmani and the rest, shall take four, three, two and one shares respectively from the property after dividing it into ten parts. Those born to a Kshatriya upon his three wives, such as the Kshatriyā and the rest, shall take three, two, and one respectively. This has an application  
15 in regard to the married wives (125)

[Colebrooke Sect. IX.]

[Distribution of effects discovered after partition.]

- (1) Something is here added respecting the residue after a general distribution of the estate. The Author directs the distribution  
20 of property withheld by fraud of brothers &c.

Yājñavalkya, Verse 126.

Effects which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares; this is a settled rule.

- 25 (2) Mīlākṣarāḥ:—*Effects, drawyam, i.e.* the common property such as had been withheld by co-partners from each other, and was also not known at the time of the general distribution of the estate, and vibhakte yaddṛśyate, *such as have been discovered after the partition, of the patrimony, tatsamāḥ amśaiḥ vibhajeran, let them divide that in equal*  
30 *shares, iti sthitiḥ, this thus is the settled rule, i. e. the rule of the law.*

(3) Here, by saying 'in equal shares', a partition with deductions has been forbidden. By saying 'let them divide,' it has been pointed out that the property is not to be taken exclusively alone by

the person by whom it was discovered. (4) Thus, since the text is thus significant, it does not imply that no offence is committed by embezzling the common property.

(5) But (it is urged) Manu has indicated an offence only in the eldest, if he appropriate to himself the common property, and not so on the part of the younger brothers? *Vide* the text: "An eldest brother who from avarice shall defraud his younger brothers, shall no longer be honoured as the 'eldest shall be deprived of his additional share, and be punished by the kings."

(6) (To this) The answer is, it is not so. For by pronouncing such conduct criminal in the case (even) of an elder brother, who is admittedly independent and is in a quasi-parental position, it is more assuredly shown—under the rule in the maxim<sup>2</sup> of 'the loaf and the staff'—to be (much more) criminal in the younger brothers, who are subject to the control of the eldest, and are held in tutelage as sons. And moreover, such conduct has been declared to be an offence without exception in the *Śruti*: "Him, indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson." (7) He who deprives an heir *i. e.* a person entitled to a share *i. e.* debar or excludes him from a share *i. e.* does not yield to him his proper

1 Chapter IX 213, read in the text "गृह्यसूत्र"

2 *अणुसंज्ञा*,—is the maxim of 'the loaf and the staff' or 'the stick and the cakes'. See note, on page 86 orig. Sanskrit—If a number of cakes are attached to a staff or stick and the stick is carried off, or eaten by mice, it need not be expressly stated that the cakes have had the same fate—it is an inference which necessarily follows. This rule is the same as the *a fortiori* reasoning of the West.

3 This is the quotation from the *Atarva Brāhmaṇa* II (VI-7) in connection with that portion of the Soma sacrifice which deals with the animal sacrifice. The passage occurs in a discussion whether the Rākṣasas should have a portion of the sacrifice, one side suggesting that they should not be mentioned and must not have a share, and the other side asserting that they should be mentioned, and as a reason in support of it is the text in the passage which in substance means that "an unjustifiable deprivation of another's dues operates by reaction in his own life time or in the generations following" (See *Ānandāśrama Series* No. 32 Part I page 172. The discussion begins at p. 176, see also *Sūrya's Commentary*)

allotment, such a one who is thus debarred of his share, destroys or annihilates i. e. renders a criminal that person who so debars him of his right; or, if he do not immediately destroy him, he destroys his son or his grandson. (8) It is (thus) pronounced to be criminal in any person without any distinction as to the eldest (or youngest &c.) to withhold common property.

(9) If it is argued that blame is not incurred by one who takes the goods, thinking them (to be) his own, under the notion that the common property also becomes his property and appertains also to him (individually). (10) The answer is, that is wrong. For, though he took it thinking it (to be) his own, still

he has taken the property of another person, contrary to the injunction which forbids his so doing, and thus he certainly does incur blame. (11) As<sup>1</sup>, in answer to a proposed solution of a difficulty, "If an oblation of green kidney beans be not procurable," and black kidney beans be used in their stead by reason of the resemblance, the prohibition contained in the rule viz. "black kidney beans are not fit to be used in sacrifices" does not apply, since they were used by mistake for ground particles of green kidney beans, it is on the contrary maintained, as the right opinion, that, "while the ground particles of green kidney beans be taken, the ground particles of black kidney beans are also actually employed as being unforbidden and the prohibitory command is consequently applicable in this case (by inference)." (12) Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

1 The argument of the objector and the reply to it is sufficiently apparent from the text itself. According to the fixed rules of interpretation *saṃyoga-samānādhikāra* is also a part of the thing itself. And the meaning here is that *śvā* (the black kidney beans) having been prohibited generally, the prohibition extends to their eggs also—which is a part of the *Māṃsa* itself and therefore, although mixed with other sorts, have to be avoided, and for this reason they must not be used as a substitute for the green ones. (See also *Bhāṣya* p. 162 & *Sabdhini* p. 56).



Vīramitrodaya

Thus even when a partition has taken place of the common stock<sup>1</sup> everywhere, if any property has been taken away by any one, in regard to that property no special right accrues to him individually, as a distribution of that portion has not taken place; and so a fresh partition must be made of that property, so the Author says

Yājñavalkya, Verse 126

*Samak*, 'in equal', i. e., equal to the share in the partition which had taken place before. The rest is clear, ( 126 )

Sūlapāni

10

The Author mentions about a lapsed share

Yājñavalkya, Verse 126

What was kept concealed at the time of the partition, but was discovered afterwards, that should be made (into) equal (parts) and distributed. The meaning is that an additional share &c should not be given to the eldest. This also holds in the case of a debt, so says Manu. "If after all the debts and assets have been duly distributed according to the rule, any property be discovered afterwards, one must divide all that equally" ( 126 )

[ Colebrooke Sect X ]

20

[ Rights of the Dwyāmushyāyana<sup>2</sup> or son of two fathers ]

(1) Intending to propound a special allotment for the *Dwyāmushyāyana* (or son of two fathers), the Author describes the nature of that relation:—

Yājñavalkya, Verse 127.

25

By one who has no male issue, a son begotten on the son of another man, under a legal appointment to both also, is such a one lawfully heir, and giver of funeral oblations.

1 Ob ix 218

2 "As here described, the *Dwyāmushyāyana* is restricted to one description of son viz the *Kṣhetraja* or "son begotten on the wife", but the term is applicable to any adopted son retaining his filial relation to his natural father along with his acquired relation to his adoptive father" Colebrooke See also *Damodar* ss. *Lingagarda* 19 Penn 428 at pp 464 and 473 (a case of *Lingayats*—based on custom), & *Mayne's Hindu Law* p 173

Mitaksharâ —(2) Under the rule of the law contained in the text<sup>1</sup>,

To a sonless widow, one commanded by the Guru &c., apotrena by one who has no male issue &c by the husband's brother or the like parakshetre on the soil of another &c on the wife of another nyagotpaditah son begotten under a legal appointment from venerable persons ubhayoh to both &c the owner of the seed as well as that of the soil he is rikthi near &c successor to their estates and pindadatâ, giver of funeral oblations, dharmatah according to law.

- (3) The meaning of this is as follows When the person who is  
 10 duly appointed such as the husband's brother, or other person and being even himself destitute of a male issue, proceeds to an intercourse with the wife of a childless man, for the sake of raising issue both to himself and for the other the son whom he so begets is the child of two fathers and denominated Dyāmushyāyana. He is heir to both  
 15 and offers funeral oblations to both (after their death) (4) When however the person appointed, has male issue and has intercourse with the wife for the sake of raising up issue to her husband only, the child so begotten by him is the son of the owner<sup>2</sup> of the wife, and not of the<sup>3</sup> owner of the seed. And such a one by this restriction  
 20 is not heir of the owner of the seed, nor is he qualified to present funeral oblations to him as has been so declared by Manu<sup>4</sup>, 'Where by a special compact a field is made over (to another) for (the sowing of) the seed then the owner of the seed as well as of the field are both considered in this work as joint sharers of it (&c of the crop)'  
 25 (5) By special compact &c when the field is delivered by the owner of the soil to the owner of the seed on an agreement in this form.

Let the child which will be here produced belong to us both' then of the child begotten in that soil the owners of both the seed and the soil are considered by the mighty sages as joint sharers (6) So<sup>5</sup>

- 30 If there be no special agreement with respect to the crop between the owner of the field and the owner of the seed the benefit clearly

1 &c I Jay orally in Acharya'shyaya 6870 p 18 above in which the husband's brother a nyagotpaditah or a sagotra have been allowed to raise issue on the wife of a widow of the dead as a relative and as he has a son is called the Apotrena son  
 &c of the wife's husband by marriage Apotrena (land) here means wife

2 &c p 100 noster

4 Cl. II-63

5 Manu Ch. IX-52

]

belongs to the owner of the field; for "the receptacle is more important than the seed." (7) "If there be no special agreement with respect to the crop"; i. e. with a special agreement viz. "Let the child begotten here belong to us both", whichever child is begotten on another's ground, that child verily is of the owner of the soil; for the receptacle is more important than the seed; as is observed in the case of cows, mares, and the rest.

\* PAGE 87.

(8) Even here, however, the appointment<sup>1</sup> for raising up issue is only in relation to a woman who had been betrothed, since any other such appointment is forbidden by Manu.<sup>2</sup> For, after premising an appointment thus: "From a brother-in-law or from a *Sapinda* (by means of cohabitation with him) by a woman who has been duly authorised, the desired offspring may be secured, on failure of issue. The person, however, so appointed to raise issue on the widow, shall at night, anointed with clarified butter, and silent, beget one son (only), but never a second in any case." Manu<sup>3</sup> has himself prohibited this practice: "By regenerate men, a widow must not be authorized to conceive by any other; for any, who authorize her to conceive by another, violate the primeval law. The raising of an issue by appointment is nowhere mentioned in the *mantras*<sup>4</sup> regarding marriage, nor is the re-marriage of widows mentioned in the rules concerning marriage. This practice which is reprehended by the learned *Dicjas* as fit only for beasts, is referred to even in connection with men, while King Vena held sovereign sway. He possessing the whole earth, and therefore eminent among<sup>5</sup> saintly Kings, formerly brought about a confusion of tribes when his intellect was infatuated

1. For Colebrooke translates 'Commission'. See *Nilamathil* p. p. 166-167, where a dissent from this doctrine is noted and passages are cited showing that a father is free to dispose of his girl, if after truth verbally pledged, the husband die before the actual celebration of the marriage. In such a case she remains a damsel (*Kanyā*) and may be disposed of by her father.

2. Ch. IX-39-40

3. Ch IX-61-68.

4. i. e. hymns from the *Veda* bearing on, or chanted at, nuptial rites.

5. A *Īśvarjā* is a king who has all the characteristics of a saint. The compound is solved in Sanskrit to indicate "that he is a king as well as a saint."

"by lust Since that time, whoever, through folly, appoints a woman  
"whose husband is dead, to have intercourse for the sake of progeny,  
"sages censure such a one"

- (9) Nor is an option<sup>1</sup> to be inferred from the contrast of precept  
and prohibition, since they, who authorize the  
practice of appointment, are expressly censured  
and disloyalty is strongly reprobated in speaking  
of the duties of women while continence is much praised. As says  
Manu<sup>2</sup> 'Better that she (the faithful wife) emaciate her body by  
"living voluntarily on pure flowers roots, and fruit, but let her not  
'when her lord is deceased, even pronounce the name of another  
'man"—By this text having prohibited recourse to another man for  
the sake of maintenance Manu<sup>3</sup> interdicts the recourse to another  
man even for the sake of progeny thus "Let her, until death con-  
"tinue patient (of all injuries) self controlled and continent, and  
"maintain before her vision that most incomparable rule of virtue,  
"followed by women<sup>4</sup> devoted to one husband only. Many thousands  
"of Brāhmanas having avoided sensuality from their early youth,  
'have gone to heaven (even) without continuing their race. And  
'like those Brāhmachāris<sup>5</sup> a virtuous wife who, after the death of her  
'husband settles herself in a uniform continent life ascends to  
'heaven, even though she has no son. But a woman who from a  
'desire to have offspring violates her duty towards her (deceased)  
'husband brings on herself disgrace in this world and loses her  
25 "place (with her husband) in the next world." Therefore it is not

1. Mark the gloss of *Uddhastā* on this verse. He says that union with another man bad but emaciating the body is also bad. The text of Manu 'Better that she emaciate the body &c.' has an implied censure also for the emaciation of the body. It only means that between the two evils the evil of emaciating the body may be preferred. 'वायस्यद्वयवयोऽपि विदुर्नृणां । देहस्य मरणस्य च । इदं त्वद्वयवयस्य वदन्नेव पुरश्चैव सप्रयोजनम् ।'

2. Ch. V 157

3. Ch. V 128 161

4. एव एविवन्त्या भा. दृक्पत्नी—reads the rule of Gr. 'निव सप्तन्यादि' (4 1-35) 'In forming the feminine with the aff. x दात् (इ) the word एविव always takes the substitute नृ in the words like 'सुपत्नी' and the rest."

5. i. e. persons taking a lifelong vow of celibacy and living accordingly

right to deduce an option<sup>1</sup> from the injunctions of affirmation and prohibition

(10) Thus *Niyoga*<sup>2</sup> having been protuluted in the case of a wife sanctified by marriage, what then is a *Niyoga* sanctioned by law? so the (same<sup>3</sup>) author says "The damsel, whose husband shall die 5  
"after troth verbally plighted, the brother of the husband may take<sup>4</sup>  
"her according to the following rule having espoused her in due  
"form she being clad in white garments, and pure in her conduct,  
"let him privately approach her once in each proper season<sup>5</sup>, until  
"issue be had "

10

(11) It appears from this very passage, that he, to whom a damsel was verbally given, is her husband even without a formal acceptance on his part. If he die, his own uterine brother, whether elder or younger, shall take her : *e.* marry her "In due form" : *e.* as directed by the *Sāstras*, "having espoused her" : *e.* wedded 15  
her, and according to the following rule, namely the rule directing the besmearing of the body with clarified butter, and the restraint in speech &c.—let him "privately" : *e.* in secret, approach her, clad in a white robe, "and pure in her conduct" : *e.* having a restraint on her mind, speech and gesture, once at each menstruation, until 20  
conception (12) Such a marriage is nominal<sup>6</sup>, and a mere part of the

1 According to the rule of interpretation विद्वेदुः (विद्वेदुः) 'when there are two contradictory texts, an option is inferred' So the Author says that no case for inferring an option arises on the ground that there are two injunctions of a contradictory character *ci.* one of affirmation and another of negation. An option (विकल्प) would arise if the two injunctions were of an equal character (द्वयोरपि विरोधेन). But here while a censure is passed upon those who authorize such a practice, none such is to be found in reference to those who forbid it. The *Jidhi* (i. *e.* the affirmative injunction) and the *Nigrah* (i. *e.* the injunction of a negative character) are therefore not equal, and therefore an option cannot be inferred (See *Dāsan bhāṭṭe* p. 165, ll 6-10 *Subodhini* Tr p. 57, ll 15-20)

2 *Niyoga*—is raising issue on the wife of a deceased person See *Yajñ.* I 68-69 p. 187 Note 1 on page 1010 3 : *e.* *Maan* Ch. IX. 69-70

4 विदेन—'know her' 5 : *e.* at each menstruation period

6 The meaning is—that as the injunctions as to clarified butter and other observances are prescribed as mere forms in approaching an authorized widow so these espousals are a mere part of that intercourse, and not a principal and substantial part, whence a regular marriage between the parties might be inferred See *Colebrooke* citing *Rajamādhya* p. 167 & *Subodhini* p. 57, ll 23-25

form in which an authorized widow shall be approached, like the injunction of clarified butter &c. It does not make her the wedded wife of her brother-in-law. (13) Therefore, the issue thus begotten belongs to the husband of the wife<sup>1</sup> and not to the brother-in-law. By special agreement, however, the issue may belong even to both.

#### Vīramitrodāya

Among the sons of the same *varṇa* or of different *varṇas*, of twelve sorts such as the *Aurasa* and other sons, the Author mentions a partition among themselves, and in some cases a non-division, but coupled with ( a right to ) maintenance

#### Yājñavalkya, Verse 127

*Parakṣhetre*, 'on the soil of another', *aputrena*, 'by one who has no male issue', by the husband's brother, or by one of a different *gotra*, *nyogena*, 'under an appointment', by the elders, a son *upādātā*, 'begotten', *ubhayaorapi*, 'of both even', i. e. of the owner of the seed and of the land also, becomes the heir entitled to take the entire heritage, and *pindaddā*, 'the giver of funeral oblations' also; *dharmataḥ*, 'under the law', i. e. in accordance with the provisions of law.

If to the owner of the seed, or to the owner of the soil, afterwards an *aurasa* son be born of another wife, ( then ) according to the *Brahmapurāṇa* : " *The Kṣhetraja* son takes three parts, and *Putrikāsula* "the fourth part." This is the meaning of the word *cha*, 'also'. By the word *api*, 'also', is included the father by the seed, and of the soil. (127).

#### Śūtapāṇi

#### Yājñavalkya, Verse 127

*Nyoga* 'appointment such as 'appointed' with clarified butter &c.', *Aputrena* 'by one who has no male issue'; upon the wife of another, *nyogopādātā* 'begotten under a legal appointment', *ubhayaḥ*, 'of both,' he is entitled to perform the funeral ceremony, as well as to take the estate. This is to be with the consent of both, so says Nārada: " With the consent of the owner of the land he whose seed is sown in the land; the issue of that is considered to be of both, of the owner of the seed and of the soil " (127).

1. Lit. Tr. "owner of the soil" *हिरण्यप्रद* i. e. to the man who was her husband by marriage.

[ Colebrooke Sect. XI. ]

[ Sons by birth and adoption. ]

(1) A distribution of shares among sons, equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the Author first describes their characteristics—

Yājñavalkya, Verses 125-132, 133 (1)

The *Aurasa*, i. e. 'legitimate son' is he who is procreated on a lawfully wedded wife; equal to him is 'the son of an appointed' daughter', *Putrikā-sutah*, *Kṛhetraja* is 'one begotten on a wife' by a *soṅotra* relation of her husband or by another (125)

One secretly produced in the house is known as *Gṛdhaya*, 'a secretly born son'. A 'damsel's child', *Kānina*, is one born of an unmarried daughter and is considered as the son of the maternal grandfather (129).

A child born of a woman whose marriage had or had not been consummated, is called 'the son of a re-married woman', *Pāunarbbhavaḥ*. He, whom his mother or father may give (in adoption) shall be considered as 'the adopted son', *Dattaka*.

(130) 'A son bought', *Kṛta* is one sold by them. 'A son made by himself', *Kṛtrima* is one adopted by the man himself. One who gives himself is 'a son self given' *Swayambhatta*. One who was (along with his mother) accepted in marriage while he was in the womb is called 'a son received with the bride' *Sahodhaya*.

(131) He, who, having been deserted (by his parents) is taken (for adoption) is 'a deserted son' *Apariddha*, [ 131 (1) ].

Mitākṣharā—(2) The issue of the breast (*uṣar*) is an *Aurasa* i. e. the legitimate son. Such a one, moreover, *dharmapatnijaḥ* is one, 'born of a lawfully wedded wife'. A woman of equal tribe, espoused in lawful wedlock, is "a legally wedded wife, and a son begotten on her is a true and legitimate son, and is' chief in rank. (3) *Tatsamah putrikā-*

1 i. e. a daughter appointed to raise a son under the contract mentioned by *Yājñakha* (XVII 17)—see further on p. 1046 II 1-5

2 Wife: i. e. of the person with whom she was lawfully wedded

3 This passage means that such a son would have preference when there is a competition between him and other kinds of sons and not that other kinds of sons are not heirs at all. See *Pāṇinīyāsya* Ch. II Part II 2

And according to *Madana Pūrvāṅga* the sons born of lawfully wedded wives although of different tribes are all legitimate. See also *Bāṇabhatta* p. 169

These passages were referred to in *Manuśāstra* p. 12 *Manuśāstra* II Man. 49 at p. 52 and *Tulsi Kāra* or *Bhāra* Lat 12 All at p. 250

sutah, equal to him is the son of an appointed daughter. 'Equal to him is equal to the legitimate son' The son (born) of a daughter (appointed) is a *Putraś suta*. And accordingly he is equal to a legitimate son. As has been said by Vasishtha<sup>1</sup> "This damsel who  
 5 "has no brother, I will give unto thee, decked with ornaments; (so "that) the son who may be born of her shall be my son" Or that term may mean a daughter regarded as a son by reason of the fact that the daughter herself is to be regarded as a son. All the same such a one is also similar to a legitimate son, as she has more of the parts  
 10 of the mother's body and less of the father's. As says Vasishtha<sup>2</sup> "The second is an appointed daughter herself" The meaning is that the second (kind of) son is the appointed daughter herself (4) The son of two fathers (*Dvayāmushydyana*) is inferior to the natural father's legitimate son, because he is produced in another's soul,  
 15 (5) *Kshetrajah kshetrajātasu sagotrena wā*, the *Kshetrajah* is one begotten on a

1 Ch XVII 17

2 Ch XVII 15—The reading in the *Vaughāha Sutra* is (third) तृतीय and not (second) द्वितीय

3 The *putrāś suta* is of four descriptions (1) The first is the daughter appointed to be a son (see *Vaughāha* XVII 15 तृतीयः) (2) The next is her son. He is called 'the son of an appointed daughter', without any special contract. He is however to be distinguished from the next & the third class. He is not in the place of a son but in the place of a son's son and is a daughter's son. Accordingly he is described as a daughter's son in the text of *Samhita* and *Ullāsa*. "An appointed daughter is like unto a son, as Prachetasa has declared her offspring is termed a son of an appointed daughter he offers funeral oblations to the maternal grandfathers and to the paternal grandfathers. There is no difference between a son's son and a daughter's son in respect of benefits conferred" (3) The description of a son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation as stated by *Vaughāha* XVII 17. He is appointed to be a maternal grandfather's son, an adopted son. (4) The fourth is a child born of a daughter who was given in marriage with a stipulation in this form 'the child who shall be born of her shall perform the obsequies of both'. He belongs as a son to both grandfathers. But in the case where she was in thought selected for an appointed daughter she is so without a compact, and merely by an act of the mind (*Manu* Ch IX 127 and 136) *Hemādri* quoted in *Colebrooke*. See also *Thakur Jeewanth Singh vs Court of wards* L R 21 A 103 106 *Fah vs Geronda* 1 Bom 107 and in particular *Karuppi Nethar vs Sanlara Narayana Chetti* 7 Mad 300 at p 312 sqq, and *Jamjotram vs Bai Jamma* 2 Bom. H O Rep 11 at p 17



wife by a sagotra relation of her husband or by another. By another, *starena*, i.e. by one who is not a *sapinda* or by a brother of the husband is a *Kshetrāja* son (128)

(6) *Gūdhajah*, the secretly born son is one *prachchhanna utpannah*, secretly produced, in the husband's house. By excluding<sup>1</sup> the case 5 of a child begotten by a man of inferior or superior tribe this must be understood to be restricted to an instance where it is not ascertained who the father is, but it is certain that he must belong to the same tribe.

(7) *Kanmah* a damsel's child, however, is a son begotten on a 10 damsel by a man of equal class, (under the same limitations) as mentioned before, and he is the son of his maternal grandfather provided she be unmarried and abide in her father's house. But if she be married, the child becomes the son of the husband alone. As says Manu<sup>2</sup> "A son whom a damsel secretly bears in the house of 15 her father is considered as the son of the husband and denominated "damsel's son, as being born of an unmarried woman (129).

(8) *Pannarbbuvah*, the son of a remarried woman, is the son be 20 gotten by a man of equal class on a twice married woman *akṣatāyām wa kṣatāyām wā* whose marriage had or had not been consummated

1 : : This clause starts with the assumption that the begetter though unknown is not of a dissimilar class. The only thing unknown is the particular identity of the man. For the ignorance as to the particular person must be the husband's not of the wife and the knowledge of his equality in tribe may be obtained through her for surely she must know who he is. But if she really do not know his tribe having been secretly violated by a stranger in a dark night then the child may bear the name of *Gūdhaja* but not a *Gūdhaja* son properly so called as described before [see *Balaśāhita* p. 170 ll 15-18 citing *Mādenaparijata*]. *Balaśāhita* also refers to the opinion of some according to which the child must be abandoned.

As to the status of such a son whose father is unknown he will have the same status and domicile as that of his mother and the same opinion is quoted by Colebrooke as being that of *Yachaspati* Manu in the *Sūddha-Chin* asan.

2 See *Balaśāhita* p. 170 ll 20-24. Damsel does not here signify unmarried only for even with that import the term is frequently used in the sense of one who has had no connection with a man. It signifies a woman with whom a regular marriage has not been consummated.

See also *Sūśodham* p. 58 ll 7-10 Tr p. 146 ll 12-15

3 Ob IX 172



(14) By the expression—"an un remote kinsman"—the adoption of one very distant by country and language is forbidden

(*Contd from last page*)

married This excludes the son of a daughter, and such is the law generally received amongst the higher castes and subdivisions of the grant Śūdra class almost everywhere, and amongst some of the higher castes by their customary law, the daughter's son is deemed fit for adoption, and even the most fit on account of the place he might formerly have taken as a son by appointment, as well as of the blood connection on which the system of appointment itself was founded "

"The passage of Vasishtha which directs that a man desiring to adopt shall make his selection from amongst near relatives, and for choice take the nearest, is so obscurely expressed as to admit of various interpretations How the ingenuity of commentators has been exercised upon it may be seen in Colebrooke's note to the Mit Chap I Sect 11 Para 13 The Samskāra-Kausthubha and the Nirṇaya-Sindhu, construing the direction most liberally, approve the adoption, failing a Sogotra Śapinda of a daughter or a sister's son The brahmins, following the Vyavahara-Mayukha, are almost uniformly opposed to this except in the case of Śūdras They rely on the impossibility of a real paternal and filial relation between the fictitious father and a son so born, and the decisions in Bombay must be considered perhaps to have confirmed the Sūtras' view, but customary law seems in a measure at least to have been represented by the doctrine of the two works referred to These were no doubt written under the influence of ideas which shaped the customary law, and they afford an example in their divergence from the more generally received authorities of parallel growths of doctrine springing from the same original source, yet taking quite different lines of development according to the medium in which they were placed The real nearness of daughter's son once procured real acceptance for the doctrine of appointment, and this in its turn has facilitated the admission of the daughter's son as fit for adoption The Sūtra had however to be interpreted accordingly, and this interpretation setting aside the ordinary doctrine of a necessary difference in the families of birth of the real mother and the adoptive father paved the way for the admission of the sister's son In the South of India the Brahminical law was for the most part apparently accepted only with this qualification, adapting it to previously existing customs as in the case of marriage between the children of a brother and a sister rejected by the stricter law of the North, but allowed in the South, because it could not be prevented "

On this passage observe the learned judges of the Madras High Court "The divergence between the generally accepted authorities and actually existing customs and the survival of the customs sanctioned by the earlier law appear to be accounted for in the above passage on sound historical principles, and the conclusions therein arrived at to receive confirmation from what we find to be established by evidence in the case before us." *Vaidanda vs Appa & Mad.* at p, 64

(15) The same (ceremonial) should be extended to the case of sons bought, self given, and made. for parity of reasoning requires it (131).

(Contd from last page)

\*The following is the note of Mr Colebrooke referred to in the above passage —

"*Rāghunaśāstra*, in the *Uddīśhatatwa*, has quoted a passage from the *Kāñhād Pūrāṇa*, which, with the text of *Varāhīya*, constitutes the ground work of the law of adoption as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law, and the authenticity of the passage itself is contested by some, and particularly by the author of *Vyākāra Vayākha*, who observes truly that it is wanting in many copies of the *Kāñhād Pūrāṇa*. Others following the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation if not a stranger, more advanced both in age and progress of initiation. The following version of the passage conforms with the interpretation of it given by *Nanda Pandita* in the *Dattaka Smṛtiśā* 'Sons given and the rest though sprung from the seed of another yet being only initiated (by the adopter) under his own family name, become sons (of the adoptive parent). A son having been regularly initiated under the family name of his (natural) father, unto the ceremony of tonsure does not become the son of another man. When indeed the ceremony of tonsure and other rites of initiation are performed (by the adopter) under his own family name, then only can sons given and the rest be considered as sons else they are termed slaves. After their fifth year, O King sons are not to be adopted. (But) having taken a boy five years old, the adopter should first perform the 'sacrifice for male issue'."

'The *Putrāṅga* or "sacrifice for male issue," mentioned at the close of this passage is a ceremony performed according to the instructions contained in the following text of *Yajur* "He who is desirous of issue should offer to fire, parent of male offspring an oblation of kneaded rice roasted upon eight pots-herds, and to Indra father of male offspring a similar oblation of rice roasted "on eleven pots-herds fire grants him progeny, Indra renders it old."

(Colebrooke)

'Nearest among his relation'—*Banṭhu-Samśṛṅgam* is the expression in the text. There are also other readings variously noticed regarding this passage viz. by *Nanda Pandita* in his commentary on *Yajur* "Adhṛabandhavam sannikṛtyam eva— which gives an entirely different rule viz. "one who is kindred dwell in a country not far off and one not connected by affinity." *Vyākāraśāstra* himself explains the term *Adhṛabandhavam* in the next line by the remark that by this expression the adoption of one very distant by country and language, is forbidden. And *Bhāṣyaśāstra* (page 172) after referring to the text of

- (16) *Kṛitāḥ, the son bought*, moreover, is one who tābhyām, by them, i.e. by both mother and father, or by either the mother or the father, vikṛitāḥ, was sold, and as before, excepting, an only son, or an eldest son, in a time of distress and belonging to the same class. As for the text of Manu: viz—"He is called a son bought, whom a man, "for the sake of having issue, purchases from his father and mother: "whether the child be equal or unequal to him"—it must be interpreted, as whether like or unlike in qualities, not in class; since the Author concludes by saying "This law is propounded by me, in regard to sons "equal by class". (17) *Kṛitmaḥ sṛāt swayamkṛitāḥ, the son made is one adopted by the man himself*—The son made however, is the son adopted as a son himself by the man, who is desirous of male issue, and enticed by the show of money and land, and being an orphan without father and mother: for, if they be living he is subject to their control. (18) *Dattātmā, the son self-given*, is one who, being bereft of father and mother, or abandoned by them, presents himself, saying "Let me become thy son." (19) *Sahodhajaḥ, the son received with the bride*, is one who being in the womb, is accepted (in the course of the marriage) when a pregnant bride is accepted. He becomes the son of the husband (131)
- (20) *Apavidhāḥ a son deserted*, is one who having been deserted, upgrāhāḥ by his father and mother, is taken (for adoption) grhyate. He is the son of the taker.

In all cases he must be of the same class (as with the adoptive father)

(Contd from last page)

Vaṁśāśā (XV 7-8) remarks "If possible—he should take a bandhusam-krāntam: i.e. — Kinsman nearly related — e.g. a brother's son or the like, on "failure of such a one he should take adīrābāndhavam, one whose kinship is not "remote, i.e. whose means of livelihood is in a near place, whose father and "other relations are near, and whose family and character are consequently "known" Mr Colebrooke also notices the other readings viz those given in *Kalpataṇḍī* and *Bṛhatkāra* viz: "Adīrā bāndhavam asmenīrābāndhavam"

1. Ch IX 174

2 See further on II 193 (1) p 1057 l 37.

3 The consent of both is the only requisite. No ceremonies, nor a document is necessary. *Kamla Prasad vs Usha*, 15 Pat 550.

4 If a woman be married while pregnant, the child born of that pregnancy is a *Sahodhā* son, such a one is to be distinguished from a *Kṛitma* (son of an unmarried damsel) because he is not born of a damsel. It is not clear how he can be distinguished from a *Gṛdhraja*, unless a too technical construction is placed on the suffix *ja* 'born', since after the marriage he is no longer one "secretly born". Whereas the chief element of a *Gṛdhraja* viz the concealment of the individual of the progenitor from whom the woman has conceived still remains there.



## Śūlapāṇi

## Yājñavalkya, Verse 126

- "A son begotten by oneself upon a wife married according to "sacrament, one should know him to be the *Aurasa*," under this text of
- 5 *Baudhāyana*,<sup>1</sup> one begotten by oneself upon a married wife of one's own caste is the *Aurasa* son. Equally entitled for a share like the *Aurasa*, is the *Putrikāputra*. *Manu*<sup>2</sup> describes a *putrikā* thus: "One having no " issue, may make his daughter in this manner an appointed daughter viz. "The child which may be born of her, shall be one entitled to offer
- 10 "funeral rites to me."

- On the wife of another who is without an issue, and who was appointed by the elders, and under the ceremony of *Niyoga* such as the anointment with clarified butter &c, a son begotten by a *sapinda* or by one of a superior *varṇa* is (known as) the *Kshetraya* son. As says *Viṣṇu*.<sup>3</sup>
- 15 "Upon one who was appointed (to beget), a son begotten by a *sapinda* or "by one of a superior *varṇa* is the *kshetraya*, the second" (128).

## Yājñavalkya Verse 129

- In 'the house', *grha*, of the husband, *prachakṣhanna*, 'one secretly', born, is the *Grādhaya* son, so declared by *Manu* and others.
- 20 Upon an unmarried daughter while residing at her father's house, one secretly begotten by a man of the same *varṇa* is the *Kāṇva* son, declared to be the son of the mother's father. As to what has been stated by *Manu*<sup>4</sup> viz: "While in her father's house, the son which a daughter "causes to be begotten in secret, that one should know as the *Kāṇva* son,
- 25 "and belonging to the husband (after marriage) as a son born of the "maiden", that has been declared by *Viśvarūpa* to be applicable when there exist the *Aurasa* and like other sons (129).

## Yājñavalkya, Verse 130

- Upon a widow who has had sexual intercourse, or one who had no
- 30 regular intercourse, and who was married again, a son born is the *Punarbhava* son, becomes the son of the progenitor. Similarly says *Kātyāyana*<sup>5</sup>: "After abandoning an impotent or a degraded husband, when a "woman secures another husband, a son born upon her is the *Punarbhava* "son, is clearly of the same class as of the progenitor."
- 35 One whom the mother and the father give up and offer, such a one is the *Dattaka*. As says *Manu*<sup>6</sup>: "That (boy) equal (by caste) whom his "mother or his father affectionately give with (a libation of) water, in "times of distress, such a son is the *Dattaka* son" (130)

1. Dh. 6 II 11. 3, 14

2. Ch. xv. 3

3. Verse 800

4. Ch. ix. 127.

5. Ch. ix. 152

6. Ch. IX. 163.



- "of the heritage must in that case be equal : since there is no right of  
 "primogeniture for a woman."<sup>1</sup> (24) So also, even in the case of  
 others, a quarter share to inferior sons, even when the superior ones  
 exist, has been ordained by Vasishtha:<sup>2</sup> "When a son has been  
 5 "adopted, if a legitimate son be (afterwards) born, the adopted son  
 "shares a fourth part" (Here) the mention of 'the son adopted' is  
 indicative also of others such as the son bought, the son made, and the  
 rest by reason of the context.<sup>3</sup> (25) Accordingly, Kātyāyana<sup>4</sup> says :  
 "If an *Aurasa* son be born, the other sons take a fourth part,  
 10 "provided they belong to the same tribe ; but if they be of a different  
 "class, they are entitled to food and raiment only." (26) "Those  
 "who belong to the same tribe" *e. g.* the adopted and the *Kṛshṭaya*  
 sons and the like, these when an *Aurasa* son exists, share a fourth part.  
 But those who belong to a different class *e. g.* "the damsel's son,"  
 15 "the son secretly born," "the son received with the bride," and  
 "the son of a re-married woman," these when an *Aurasa* son exists,  
 do not take a fourth part, but are entitled to food and raiment only.  
 (27) Although there is a text of Viṣṇu 113 : "Exceptionable sons are,

1 This passage is obscure and is not in a line with the logical accuracy and perspicuity which are the invariable characteristics of *Bhāṣa Vyākhyāṣara*. Taking the text of *Mānu* by itself it says that a female is not entitled to the rights of primogeniture. *Bhāmabhaṭṭa* (p 174 l. 17) explains it by suggesting that it is meant to meet a position which may be taken on the strength of the rule that the appointed daughter herself is a son (प्रतिवेदं यत्र इति द्वितीयादिदेशः), while *Vyākhyāṣara* refers to the text of *Mānu* for showing that when an *aurasa* and a *pautrikaya* compete, it may be urged that the entire estate should go to the *Aurasa*, but it not been for the rule of *Mānu* in IX. 134.

The *Subodhā* (p 68 l 17-23) has attempted to explain the passage thus : "By this text of *Mānu*, the eldest does not get the preference share allowed to him " in the text (of *Mānu* Ch IX. 112 see above p 187 ll 5-7) Indeed, under this text "he is only entitled to an equal portion. Ordinarily an *Aurasa* alone is entitled to "the entire heritage, but by the text of *Mānu*—"The division must be equal"—the "*Aurasa* does not take the entirety and thus the *Pautrikaya* takes a share. This seems to be the only way in which the two passages can be connected together."

2 Ch. XV 9 अयं पौत्राय विभागः—"he (the adopted son) shall be the partaker of a fourth share."

3 *e. g.* प्रतिवर्गमादिशितं Tr "for they are equally adopted as sons." Colebrooke protests this reading. 4 Verse 857.

5 This reading is followed in the *Madanapāryāya*, and *Vīramitrodaya*. But the *Ashtadhyāyī*, *Ratnākara* and other compilations read a "third part." Vide *Jñāna Vāhana* C 105 13 Colebrooke.



"a damsel's child, a son of concealed origin, one received with a  
"bride, and a son by a twice-married woman, these never share the  
"funeral cake nor the inheritance", still it is intended to prohibit a  
fourth share when an *Aurasa* son exists. But if there be no legiti-  
mate son or other (preferable claimants), even the damsel's child  
and others succeed to the whole of the paternal estate under the  
text 'In the absence of the preceding, each next succeeding &c."

(28) Similarly, although there is a text of Manu 'The  
'*Aurasa* son alone is the (sole) heir of his father's wealth, but, as a  
"matter of compassion he may give maintenance to the rest," that too  
must be considered as applicable to a case where the son adopted and  
the like are hostile to the *Aurasa* son and devoid of good qualities  
(29) Here a special rule regarding a *Kshetraya* son has been  
propounded by the same Author 'Let the *Aurasa* son, when dividing  
'the paternal heritage, give a sixth part or a fifth, of the patri-  
"mony to the *Kshetraya* son": i. where there is hostility as well  
as want of good qualities then a sixth part but  
if only one of those defects exist, a fifth part, and  
thus the two cases should be discriminated

(30) Although Manu having premised two sets of six sons, has  
declared the first six to be heirs and kinsmen and the last six to be not  
heirs but kinsmen viz "The *Aurasa* son, as also the son begotten on a  
"wife, the son adopted, and also a son made, a son secretly born and so a  
"son cast off, are the six heirs, and kinsmen (159) The damsel's  
"son, the son received with the bride, the son bought, as also the son  
"begotten on a remarried woman, the son self given, and the son  
"born of a *Sārdā* woman are six not heirs but kinsmen (160),'  
(31) that too must be expounded as signifying, that the first six may  
take the heritage of their father's *sapindas* and *samanodakus* if there be  
no nearer heir, but not so the last six (The tie of) kinship (*bāndha*  
*ratnam*) however, is alike in the case of both by reason of their being  
*Samānagotra* and *Sapinda* and thus being capable of performing the  
duty of offering libations of water and the like (32) It must be  
thus expounded, for the mention of a given son in the following

passage<sup>1</sup> is intended for any adopted succedaneous son: "A son  
 "given away must never claim the family and estate of his natural  
 "father. The funeral cake follows the family and the estate, and of  
 "him who gives (away his son), the funeral offerings fail" (33) The  
 5 right of inheriting their father's estate, however, is, without exception  
 equal in the case of all in the absence of sons mentioned next above  
 each, in the order of precedence, as the text<sup>2</sup> "Not brothers, nor  
 "parents, but sons are heirs to the estate of the fathers," purposely is  
 intended as affirming the succession of all subsidiary sons other than  
 10 the *Aurasa* son, the right of the *Aurasa* son having been already  
 propounded by the text<sup>3</sup> "The *Aurasa* son alone is the (sole) heir  
 "of his father's wealth", and the word heir (*dyāda*) being well-  
 known as used to signify any successor other than a son as in (the  
 expression) "The heirs also should be made to give &c" (34) The  
 15 variation which occurs in the institutes of *Varshihra*<sup>4</sup> and others

1 *Manu* Ch IX 142 2 of *Manu* Ch IX 189 3 of *Manu* Ch IX 163

4 See *Sambhūti* (pp 60-61 Tr p 101 ll 32 38, p 162 ll 1-34) Referring  
 to this passage in the *Sambhūti* Mr. Colebrooke adds the following note *Manu*  
 declaring the appointed daughter equal to the legitimate son includes her under  
 legitimate as oc (IX 165) and proceeds to define the remaining ten succedaneous  
 sons (IX 168-178) But *Varshihra* states the appointed daughter as third in rank  
 (XVII-166) which is in disagreement in the order of enumeration. The  
 same must be understood of other institutes of law viz. *Viśnu* 15 2 37 *Āśvini*  
 (13-44 46) *Danda* &c How then is the succession of the next in order on failure  
 of the preceding reconcilable? The author proposes this difficulty with its  
 solution. His notion of the mode of reconciling is this *Manu* declaring that the  
 first set of six sons by birth or adoption is competent to inherit from collateral  
 kinsmen on failure of nearer heirs but not so the second set, afterwards pro-  
 ceeds to deliver incidentally definitions of those various sons. It appears  
 therefore to be a loose enumeration and not one arranged with precision.  
 Accordingly *Manu* in saying "Let the inferior in order take the heritage" does  
 not limit this very order but intends one different in some respects, and the differ-  
 ence is relative to good and bad qualities. The same must be used with the vari-  
 ations in other codes. Moreover what is ordained by *Idānata* is consistent  
 with propriety. For the true legitimate son and the son of an appointed daughter  
 are both legitimate as he and consequently equal. The son of the wife a son of  
 hidden origin the son of an unmarried damsel and a son by a twice-married  
 woman, being produced from the seed of the adoptive father and from the soil  
 appertaining to him have preference before the son given and the rest. The  
 son received with a bride, produced from soil which the adoptive father accepts  
 for his own is placed in the second set by the authority of the text or because  
 the mother did not appertain to the adoptive father at the time when the child  
 was begotten. The whole is therefore unexceptionable.

respecting some one in both sets, must be understood as founded on the difference of having been<sup>1</sup> or not been endowed with qualities. (35) But the assignment of the tenth place to the son of an appointed daughter in Gautama's text<sup>2</sup>, is relative to one differing in tribe. Therefore this is established, that in the absence of those (mentioned) in the preceding order, those following next in order will be entitled to the inheritance.

5

(36) As for the text<sup>3</sup>. "If among (several) brothers sprung "from one (father), one have a son, Manu has declared them all as "fathers of a male offspring on account of that son," that also is intended to forbid the adoption of others, if a brother's son can possibly be adopted, and not for setting up a claim as a son, as that would be inconsistent with the subsequent text (Yajñ II 135) "Their sons, the Kṣhetraj and the Itāhū &c."

10

Śūtapāni

15

Yājñavalkya, Verse 132

He becomes entitled to offer *pen*/*i*, *śrā*/*i* *l*/*i*, and the like, and also is entitled to take the wealth

When, however, the brother's son exists, the *Kṣhetraj* and the like others substitutes of a son are not entitled, as says Manu<sup>4</sup> "If among "brothers born of one father, one have a son, all these (others) through "that one, are (regarded) as having a son, so Manu has declared" Then also, in the absence of brother's sons, should be made the sons such as the *Kṣhetraj* and the others

25

Of the co-wives of one husband also who are without a son, the son of a co wife is the son himself, as says Manu<sup>5</sup> "Of all the wives of a "one, if one have a son, Manu declares them all (to be) mothers having "sons through that son" "Wives of one" *i* e of one husband (132)

30

(37) The Author next adds a restrictive clause by way of conclusion to what had been stated

35

Yājñavalkya, Verse 133 (1)

This law is propounded by me in regard to sons equal by class.

Mitākṣharā—(38) Only among sons equal by class, *ayam vidhah*, *this law*, *i* e (the one) expressed in the text "in the absence of the

1 *गुण* &c (p 30 l 14) have a reference to the sons and are adjectives qualifying that term  
2 Ch XXVIII 31  
3 Of Manu Ch. IX 182 4 IX 182 5 IX 183 See Vishnu also XV 41

“preceding, the next following in the order (of enumeration) &c.”  
and not among sons differing in class (39) Here, moreover, the  
damsel's son, the secretly born son, the son received with a bride,  
and a son by a twice-married woman, are deemed of like class,  
5 through their natural father, but not in their own characters, as it  
has already been stated that they are not within the definition  
of tribe and class (40) So also, since issue procreated in the  
direct order of the tribes, as the *Mādhavāsikta* and the rest, are  
comprehended under legitimate issue, it must be understood, that, on  
10 failure of these also, the right of inheritance devolves on the *Ishetrāja*  
son (of the wife) and the rest

(41) But the son by a *Sūdrā* wife, though legitimate, does not  
take the whole estate even on failure of other issue Thus Manu  
says “But whether a man have sons or no sons (by wives of  
15 ‘other classes), no more than a tenth part must be given to the  
“son of a *Sūdrā* woman, according to law” (42) Whether he have  
sons : or whether he have existing the male issue of a regenerate  
tribe, or “have no sons” : or have no issue of regenerate tribe, in  
either case, upon his demise, the son of the wife or other (kind of son),  
20 or any kinsman (*sapinda*) shall not give to the son of the *Sūdrā* more  
than a tenth part of the father's estate (43) Thus it appears from  
this very text, that the son of a *Kshatriyā* or a *Varyā* wife takes the  
whole of the property on failure of issue by women of equal class

## [Colebrooke Sect. XII]

[Rights of a son by an unmarried female in the case of a  
25 *Sūdrā*'s estate.]

(1) The Author next delivers a special rule concerning the  
distribution of the estate of a *Sūdrā*

1 Ch IX 164 The author of the *Subodhini* reconciles this text of Manu  
with that of Yājñavalkya (II 125 p 1033) above in which it has been laid down  
that the son born of a *Sūdrā* woman is entitled to one share, by noting that one  
share in that text of Yājñavalkya is obviously one of the 10 shares into which the  
estate is to be divided under that text viz 4, 3, 2 & 1 (See *Subodhini* p 61 ll  
22 25 Tr 153 ll 31 32 & p 154 ll 14)

# Yājñavalkya, Verses 133 (2), 134

A son begotten by a Śūdra even though upon a *dāśī* (female slave) may take a share by choice [ 133 (2) ]

But after the death of the father, the brothers should make him a half-sharer; if he have no brothers he may take the whole property, unless there are sons of daughters ( 134 )

1 Who is a *Dāśī*—The woman entitled to be called a *Dāśī* or an *avaruddhā* etc. ( a permanent concubine ) must be one with whom the connection is open and who lived as a member of the family. Thus a Mohammedan prostitute cannot be called a *dāśī* though she was a permanent concubine. *Mt. Haidra vs Narindra Bakramji*, 1 Luck. 184. See also *Pajna Nath Das vs A. das Chandra Day*, 48 Cal. 643, (F.B.) *Ben. Monghobai vs Um. Nagnobai* 24 Bom. L.R. 4009=47 Bom. 401=53 I.A. 153.

It is not however, subject to the further condition that a marriage could have taken place between them. *Somedarajau vs Arumachalam*, 39 Mad. 136. Permanence of the relationship is sufficient. *Kawa Rajadharu vs Papaymal* 48 Mad. 805.

A Brahmin mistress of a Śūdra is not a *Dāśī*; nor the son a *Dāsputra*, he has no right to the property of the father, *Ramchand a vs Hanamant* 60 Bom. 75.

Nor can a kept mistress whose husband is alive be called an *अवर्द्धा* *Amardal* vs *Chandrabai* 48 Bom. 203.

The question as to the status and the share of a *Dāsputra* was referred to and discussed in the following cases. In almost all these cases the passages from Yājñavalkya and Vyākṛantara's commentary of the *Mitākṣharā* thereon were referred to and discussed. The following is a short summary of the decisions having a special reference to this part of the text.

In any view of the texts, an illegitimate son is looked upon as a member of a family, entitled to some, if not all the rights of a member as such. He is entitled to maintenance in those cases where he does not succeed by survivorship or inheritance. In this respect Hindu law differs from English law in so far as it does not treat him as a *filius nullius*. See *Hargobind Amari vs Dharam Singh* 6 All. 329. *Rahi vs Gound* 1 Bom. 97. Among the Śūdra caste, the illegitimate sons in default of legitimate sons are entitled to inherit. *Inderam vs Ramaswamy* 13 M. I. A. 141. *Sadu vs Basu* 4 Bom. 37 (F.B.).

The illegitimate son of a *Āśhtrīya* by a Śūdrā woman is not a Śūdra, but of a higher caste called *Ugra*. *Brindavana vs Radhamam* 12 Mad. 32.

N.B.—An illegitimate daughter is not entitled to inherit the claim of the sons being based on texts which specially mention them, the daughters not being so mentioned. *Bhikya vs Bala* 32 Bom. 562=10 Bom. L.R. 736.

But a mother can take as heir to her illegitimate son. *Jagernath Gyr vs Shet Bahadur Singh* 57 All. 80 at p. 168. ( a case of Gosains )

\* PAGE 91.

Mitākṣharā—(2) A son begotten by a *Sādra* on a *dāsi* (female slave), obtains a share *kāmalah*, by choice, i.e. by the option, of the father. But, after (the death of) the father, if there be sons of a wedded wife, then these brothers should make that son of the *dāsi* (female slave), a half-sharer, i.e. they should give him a half from their

(*Could from last page*)

In *Sarmani vs Manu* 2 All 134 the offspring of a kept woman or a continuous concubine was held to be on the same level as to inheritance as the issue of a *dāsi* (female slave) by a *Sādra*, and he was held capable of succeeding to the occupancy holding of his father as a "male local descendant" within the meaning of the Agra Tenancy Act, 1901. *Ramlal vs Jamma* 30 All 508. In *Jagendra Bhupat vs Nattigund* 11 Cal 713 and 18 Cal 151 (P O) 17 I A 128, both the High Court and the Privy Council recognised the right of an illegitimate son as a coparcener with his legitimate brother in the ancestral estate and he was held to be entitled to take by survivorship even in the case of an impartible estate. He does not, however, acquire a joint interest in the property with his father in the ancestral family property. It is only after the father's death that his right commences, so that if the property is disposed of by the father during his lifetime, he cannot claim a share in it after his death. *Pam Saran vs Telchand* 28 Cal 195. Nor does the illegitimate son become a coparcener in the fullest significance of the term, and therefore he is not entitled to claim by survivorship against the collateral relations of the father. *Krishnaprasad vs Mutusami* 7 Mad. 407. *Parvathi vs Thirumala* 10 Mad 384.

In a case of disputed succession among *Sādras* to an Impartible estate where the claimants were sons by two wives of the same caste, but of different grades, the son by a wife though junior, but of a superior grade, was held to be entitled to preference. *Ramasami vs Sunderachegudem* 17 Mad 422.

The *Dāsyputra* is entitled to maintenance among the regenerate classes. It does not cease when he comes of age. But he is not entitled to his marriage expenses. *Motichand vs Chandrabai* 26 Bom L R 488.

1 And this is made clearer by *Bāṇabhaṭṭa* (p 182 ll 22 23) & *Sulodhana* (p 61 l 35) "From the entire estate, a half of what would be regarded as his share : i.e. one half of the amount allotted to a legitimate issue."

He is entitled to one half of the share to which he would have been entitled had he been legitimate. The widow by marriage and the sole illegitimate son take equally. *Kamulamma vs Varmantha Swami Achar* 23 Bom L R 577 = 50 I A 32. See 18 B L R 70=40 Bom 369.

Members of legitimate descent cannot claim heirship to a line of illegitimate descent. *Maharajah of Kolhapur vs Santharam Appar* 48 Mad 1.

own allotment. However, should there be no sons of a wedded wife, the son of the *dāsi* (female slave) shall take the whole estate, provided there be no daughters of a wedded wife, nor their sons. But if there be such, the son of the *dāsi* (female slave) participates for half a share only. (3) From the mention of *Sūta* in this place, moreover, (it follows that) the son begotten by a man of a regenerate tribe on a *dāsi* (female slave) does not obtain a share even by the father's choice nor even a half, much remote (is the chance of his claiming) the whole. But, if he be docile, he receives a bare maintenance [ 133-134 ]

Vāṛamitrodāya

10

The Author states the characteristics of the twelve sons, by the verses beginning with '*Aurasa*' etc

Yajñavalkya Verses 128-134

*Dharmapatni*, 'a lawfully wedded wife', i.e. of the same *varṇa* married according to (the dictates of) law, of her, born from the husband is the *Aurasa* son. Here (the condition of) belonging to the same *varṇa*, by reason of its relating to the twice born, is intended as spoken of as referring to the three *varṇas* such as the *Brahmana* and the rest. Otherwise according to *Parijata* sons of the *Kṣatriya* and "*Vaiśya* wives married to a *Brahmana* and born of him may not be included among the twelve kinds of sons. By reason of his being procreated from the breast (*uras*) of the husband, he is (called) the *Aurasa*"

"He who is born of her, that son shall be my son, under this rule of an agreement stated by *Vasishtha*,<sup>1</sup> a maiden who has been married is called the *Putrika*, a son born of her is the *Putrikāsuta*, thus his characteristic has been stated as derived from a parity of expression. Such a one, moreover, is equal to an *Aurasa*, is entitled to take the heritage of the maternal grandfather, and to offer exequial rites to him. In this connection, *Manu*<sup>2</sup> states a special rule. "To the mother first should the *putrikāsuta* offer a *pinda* the second, however, to her father, and the third to the father's father"

One born from one appointed in regard to the land of another, whether of the same *gotra* or of a different *gotra*, is the *Kṣhetraya*, the son of the owner of the land. Where, however, an arrangement has been made

as e.g. "Whatever issue is begotten on this shall belong equally to both of us", there, he is the son both of the owner of the seed as well as of the soil. This is the meaning of the last verse. That has been stated by Manu "Where by a special compact a field is made over to another  
5 "for (sowing) the seed, of that (i.e., the produce of the seed) the "participators in this world are considered to be both the owner of the "seed as well as of the soil. (128).

Grhe, 'in the house', upon the wife by another *prachchhanna*, 'secretly', i.e. even without an appointment, as the result of a conception from a secret (sexual) connection *uppannah*, a son (thus)  
10 'produced,' such a one, however, is declared to be *Gudhaja*, 'one secretly born'. In this connection Manu<sup>2</sup> (says) "One in whose "house a son is born, and it is not known by whom he was begotten, "such a one being born secretly in the house, belongs to him on whose  
15 "wife he is born" *Talpa*, 'wife', i.e. the wedded wife.

On a maiden i.e. on an unmarried daughter, the son born is the *Kāmna*, such a one is the son of the mother's father. vide Vighna :  
"By him, the mother's father becomes 'the father of a son', he should  
"offer (to him) *ṣaṣṭa* and take (his) property. If upon marriage  
20 the husband be without an issue, even of him such a one is (entitled to be) a son, vide this text of the *Brahmasphuṭa* "If from one who "has been taken in marriage, a son was born (while) in the father's "house from one of the same *varṇa*, such a one is the *Kāmna* son again "of him to whom she is given (in marriage) (129)'

One who is married again is 'a remarried woman' *Punarbhikṣ*;  
upon her whether d-flowered i.e. consummated, by the previous  
husband, or undowered i.e. not consummated, a son born is called  
*Punarbhikṣa*, 'the son of a re-married woman.' Here Kātyāyana<sup>2</sup> :  
25 "One born from her is the *Punarbhikṣa*, and it is clear he is the son  
30 "of the progenitor."

The father, or in his absence under his permission, the mother, the son whom he (or she) may, out of affection, give with (the libation of) water to another, such a one becomes the *Dattak* : 'adopted' son of the acceptor. As says Manu<sup>1</sup> "The heritage and the *gotra* of the  
35 "genitive father the son given shall not take, the (right of offering) "pinda follows the *gotra* and the (right to) inheritance, from one who "gives away, the exequial rites recede. *Śradhā*, 'the exequial rites' "i.e. the *śraddha*, the funeral and allied rites (130)



*Tābhyām*, 'by the two', i. e. by the mother and the father, *vikritah*, 'sold', that son who was *Kṛta*, i. e. 'bought' becomes (the son) of the purchaser.

*Kṛtrima*, 'a son made', under a request made by oneself, viz. 'be my son', and agreed to thus, viz. 'I am thy son', one accepted is a *Kṛtrima*, i. e. 'a son made.' By the use of the word *cha*, 'and', is added that it was 'with the consent of the mother and the father'; since while they are living he is dependent on them. 5

Even without a request, in the absence of the mother and the father, or one who has been abandoned, one who *swayam*, 'himself', offers as a son, such a one is *Swayamdatta*, 'a son self-given', is the 'son of the acceptor,' 10

While in the womb, by reason of the mother's marriage only, one who becomes the son of the parents (thereafter) married, becomes the son of the husband and is called *Sahodhaja*, 'a son received with the bride.' 15 That has been stated by Manu: "Where a pregnant woman is married, "either knowingly or unknowingly, to the husband who weds (her) "belongs (the child in) the womb, and he is also called *sahodhā*, 'the son "received with the bride" (131).

One, however, who by his parents *utsrakṣa* 'has been abandoned', or owing to their inability to maintain him has been given up, and by another is taken up as a son, such a one (becomes) the son of the acceptor known as *Apavidhā*, 'a deserted son', (132). 20

*Eṣāṁ*, 'of these', twelve sons, *īpūrvapīrvābhāve*, 'in the absence of the one preceding', *paraḥ paraḥ*, 'each one next succeeding', becomes *pinḍadāḥ amśaharaṇcha*, 'the giver of the (*pinḍa*) funeral cake, and the inheritor of a share' also. 25

The word *amśa*, 'share', in the case of a *putrikā* and *kṣhetrajā* means the entire share, under the text of Likhita and the Brahmapurāṇa, and also vide the text of Kātyāyana: "When an *aurasa* son is born, the "(other) sons of the same *varṇa* are entitled to a third share; while "those not of the same *varṇa* receive food and raiment". 30

Even in regard to other sons of the same *varṇa*, *savarna*, viz. the *dattaka*, *kṛtrima*, *gūḍhoṣṭanna* and *apavidhā*, the word *amśa* has the sense of the entire share. "The *aurasa* son alone shall be the "owner of the paternal estate; as for the rest, in order to avoid harshness, 35

"one may give maintenance," this text of Manu, it should be understood, has application where the *Aurasa* son is endowed with good qualities and the others are worthless [132 (2)].

*Ayam vidhah*, 'this law,' i. e. 'in the absence of the one preceding,  
5 each one next succeeding' etc. *sayāthyaśhu*, 'in regard to (sons) equal by caste,' i. e. the sons of the (first) three *varnas*, *mayotah* 'has been propounded by me'. In regard to those not of the same *varna*, even if there be a *putrikāputra*, the *Pṛthetraya* son of the same *varna* is entitled to the inheritance, thus should be observed the arrangement in regard  
10 to the rule, in consonance with the text of Kātyāyana cited above [133 (1)]

*Sudrena*, 'by a Sudra' however, *dāsyam*, even though upon a *dasi*,  
i. e. upon a *sūdra* woman not married, the son *puṭrah*, 'born', *kāmatah*, 'by choice', i. e. at the option of the father, may be made the partaker of a  
15 share equal to other sons

*Mṛte putrāḥ*, 'after the death of the father', when a partition is made, *bhṛatarah*, 'the brothers', i. e. the sons by the married wife, *tam*, 'him', i. e. the son by the *dāsi*, should make a partaker of a half share. The *dāśaputra*, when there are no sons by a married wife, and  
20 in the absence of the sons of the daughters of the father, i. e. of the daughters' sons, and by the *a fortiori* reasoning, in the absence of the daughters, *sarvam*, 'the entire property of the father, *haret* 'may take', [133 (2), 134]

### S'ūlapāṇi

25

#### Yājñavalkya, Verse 133

This law which has been propounded in regard to the *Aurasa* sons and others, should be understood as applicable to sons of the same caste, with the exception of the 'son brought'

*Dāśaśm*, 'upon a *dasi*', *sūdrana putrah*, 'one begotten by a *sūdra*,' at the  
30 desire of the father becomes entitled to a share like other sons (133)

#### Yājñavalkya, Verse 134

*Mṛte tu putrāḥ* 'when the father, however is dead', the sons of the father by a wedded wife, should make the son by a *dāsi*, the partaker of a half share. If sons of that description or if a daughter's son of that descrip-  
35 tion do not exist, then he alone should take the entire patrimony (134)

Mitākṣharā :—(3) He who has no son, of any (sort) among the twelve descriptions above stated<sup>1</sup> is *aputraḥ*, one having no male issue. Of such a man having no male progeny *aputrasya*,<sup>2</sup> and *swaryāśasya*, of one who has departed for heaven i.e. who has departed for another world, *dhanabbāk* the heir or successor to the property, is that person, *eshām* among such as have been here enumerated i.e., the wife and the rest, *uttara uttarah* who is next in order, *pūrvasya abhāve*, on failure of the first mentioned respectively. Such is the connection (of words in this sentence)

(4) *Ayam vidhāḥ*<sup>3</sup>, this rule, about the taking of heritage or the order of succession must be understood *sarvesha varneshu*, as extending to all tribes, whether the *Murhāṇḍa* and others in the direct series of classes, or *Śūdra* and the rest in the inverse order, and as comprehending the several classes the Brāhmaṇas and the rest

(5) Among these first, the wife takes the estate. *Patni Hye*, (4) The wife signifies a woman espoused in the performance of the nuptial rites, conformably with the etymology<sup>4</sup> of the term as implying a connexion with religious rites, moreover, the singular number has been used with a view to include

1 i.e. in verses (128-132) above on page 1015 above

2 The word 'am' *putra* is used here in an extended sense. See *Buddha Singh vs Lalia Singh* 34 All 670. See *Balaubhasti* p. 187 l. 27 "अयं पुत्रस्य विधायकः" "

3 The verses 135 and 136 of *Śāṅkarākhya* given above indicate the general rule of succession to the estate of one who leaves behind him no male issue. *Vyākṣharā* first explains generally all the words in these verses. After that he takes the case of each claimant, and after examining other texts for and against the right of inheritance in each case deduces a conclusion which is to be accepted as his. The division by Mr. Colebrooke of this portion of the *Mitākṣharā* into several sections has been from this point of view. These §§ 5-30 of sect. I (pages 91-93) cover the discussion as to the right of a wife. (cont.)

Sect. II of the daughter & daughter's son

III The Parents

IV The Brothers

V The Gotrojas

VI The Bandhus

VII The Utterior heirs

4 i.e. as contained in *Patni's* rule (et 4 l. 33) "पत्नीं वसतेष्वेति" "The substitute or replaces the dual of पति before the feminine affix (इति ई, ) when the word so formed indicates 'a wife who takes part in the sacrificial act of her husband'. Thus it would appear from a strict interpretation of this rule that if a man has

“the wealth of her husband, who is not<sup>1</sup> unfaithful, and failing her,  
“the daughter ( inherits ) if unmarried.” And again: “Of a man ( who  
“has died ) leaving no male issue, the wife born in an Ārya<sup>2</sup> family,  
“or even<sup>3</sup> the daughters, failing her the father, the mother, the  
5 “brother<sup>4</sup> and<sup>5</sup> his sons are pronounced to be the heirs”. Also Bṛhaspati:  
“Notwithstanding there be kinsmen, a father, a mother or a uterine  
“brother be present, the wife of a deceased man, who left no male  
“issue, shall take his share.”

(7) Passages, adverse to these<sup>7</sup>, likewise occur. Thus Nārada<sup>8</sup> has  
10 stated the succession of brothers, though a wife were living, and has  
directed a bare maintenance to the widows thus: “Among brothers, if  
“any one die without issue<sup>9</sup>, or enter a religious<sup>10</sup> order, let the rest of the  
“brothers divide his property excepting the *strīdhana* (of his wife). They  
“should make provision for the maintenance of his wives till their death,  
15 “provided they preserve unsullied the bed of their lord. They may

1. Colebrooke translates, “provided she be chaste.”

This also includes by implication the other condition that she should not be  
opposed to the husband (see Bālabhāṭṭi p. 189 l. 13.)

2. As opposed to one born in a non-Āryan family. Bālabhāṭṭi (p. 180.  
l. 15) also observes that “birth in an Ārya family” does not mean mere birth, but  
it means birth in a good family when the marriage was in the *Anuloma* form. It  
is to be noticed that both *Yājñavalkya* and *Bālabhāṭṭi* admit by implication that  
wives from other castes were also entitled to be called *Patnis*. Colebrooke trans-  
lates अग्रजस्य as “of honest family.”

3. By the use of the word (*Apī*) “even” daughter’s sons are also included  
(Bālabhāṭṭi p. 189)

4. The word “brother” also includes the sisters (Bālabhāṭṭi p. 189.)

5. The addition of (*Chā*) “and” brings in (their) daughters also.  
(Bālabhāṭṭi).

6. Ch. XXV. 6-8

7. These i. e. the passages cited above (*Subodhīni*). Colebrooke tr. “adverse  
to the widow’s claim.”

8. Ch. XIII. 25-26.

9. i. e. without male issue. Bālabhāṭṭi.

10. The Sanskrit word is *pravrajat* i. e. become a *Sannyāsi* and thus enter the  
fourth and last of the orders viz. *śrāmaṇa*, *sannyāsi*, *śramaṇa* and *śramaṇa*.

"however, cut it off in the case of those who behave otherwise." That the estate of a sonless man goes to the father or the brother has also been shown by Manu<sup>3</sup> "Of him, who leaves no son, the father shall take the inheritance, or the brothers." "Of a son dying childless, the mother shall take the estate, and if the mother also be dead, the father's mother shall take the heritage," by this text<sup>4</sup> he has likewise shown the mother's right to succession, as well as the paternal grandmother's: thus Śaṅkha also: "The wealth of a man who departs for heaven, leaving no male issue, goes to his brothers; failing them, his parents may take it, or his eldest wife," has thus declared the right of succession in order (of succession) of the brothers, the father, and also of the eldest wife. By Kātyāyana<sup>5</sup> also (has been said): "If a man die while separate, and there are no sons, let the father take his property, or the brother, the mother, or the mother of his father successively."

(8) An adjustment<sup>6</sup> of these and other<sup>7</sup> contradictory texts has been drawn out by Dhāreśwara thus: the texts<sup>8</sup> which lay down the rule that 'a wife shall take (the estate)' have reference to the widow

1. अविश्य. (Āśekhādynt) : s should either not allow if the wives are unchaste or put a stop to the allowance after they become unchaste. This passage may be marked in connection with the maintenance of those widows who subsequently become unchaste.

2. This passage also occurs in the Dīyabhāga XI 1 48, where the word *Stri* has been used in reference to "women who were actually espoused, but had not the rank of wives," while Viṣṇūśvara uses it pointedly with reference to *unwed* using the word *patei*. See *Ponnappa vs Papparayyanagar* 4 Mad. at p 32, *Gangai vs Chandrabhagabai* 32 Bom. at p 286, *Lakshmi vs Casan* 5 Bom. 122; *Savitribai vs Laxmibai* 2 Bom. 612 89, *Subramaniga Pandya Chokka Talsaur vs Siva Subramaniga Pillai* 17 Mad. 300

3. Ch IX. 185

4. Ch IX. 217. 5 Verse 928

6. This is in accordance with the general rule that when there occur passages which are of equal weight but which are contradictory, the application must be adjusted, as otherwise the rule of option might follow. अथवातिथेः (अथवा) See note on अथवातिथेः & अथवा (on p 35 n 4 ante.)

7. i. e. the texts cited above and those texts following viz. Gautama, Manu, Vaṅśīśa, Nārada & Yājñavalkya.

8. i. e. of *Vedānta-Manu*, *Bṛhadaranyaka*, *Kātyāyana* and *Bṛhaspati* cited above pp 1067, 1068.

of a separated brother, and that also provided she be solicitous of authority for raising up issue to her husband<sup>1</sup>:

1 Whence<sup>2</sup> is it inferred, that a widow succeeds to the estate provided she seek permission for raising up issue, but not if she remained alone by<sup>3</sup> herself? From the text<sup>4</sup> (above cited) viz. "The father shall take the inheritance of him, who leaves "no son," and other similar<sup>5</sup> passages. For here a rule of adjustment and a reason for it must be stated<sup>6</sup> but no other rule of adjustment or reason exists. And also on the authority of the text of Gautama<sup>7</sup>

1. *Niyoga* means raising up an issue to the deceased husband by appointment, see Yājñ II 127 above and notes (p 1039) II 26 28 )

2 This is the doubt raised by *Dhātarekara* the solution of which is given immediately by him. Dhātarekara's view is 'that a widow is entitled to inherit her husband's property only when she obtains authority to have male issue raised up to her husband by means of *Niyoga* (levirate) that if she obtains no such authority, she cannot inherit but is merely entitled to maintenance, and for this *Dhātarekara* relies on the above quoted text of Nārada and also that of Yājñavalkya (II 142) Vyāsaśaraṅga combats this view and shows further on that *Dhātarekara* has misapplied these texts. See observations of Chandaśarṅkar J in *Ganga vi Chandrabhāgabat* 32 Bom 275 at p 282 sqq

3 *Na svatantrāyā* 'and not if she remain independent' Colbrooke translates "but not independently of this consideration" But the word *Svatantrā* qualifies the widow (see Balambhaty & Sabodhini p 62 II 17 18 )

4 i.e. of *Manu* Ch. IX, 185

5 i.e. of Nārada (XIII, p 26 26) &c "from passages"; i.e. on account of the contradiction appearing in these texts

6 Colbrooke "Sought"

7 Ch XXVIII 21 22 *Dhātarekara* does not properly quote the text of *Gautama* nor has he properly interpreted it. The text properly reads thus "विदोयमिवैव सिद्धं भवेत्तु कीं वाजपत्यम् (21). वीजं वा विदोयम् (22)". There are two *Sūtras* combined here. *Sūtra* No 21 says 'Let kinsmen related by pinda &c. take the heritage, or the widow of one dying without issue. The *Sūtra* (22) says 'Or she may seek to raise up issue to him'. But what *Dhātarekara* does is that he stops after the clauses of kinsmen &c. and begins with the 'widow' and joins that portion of this *Sūtra* to the next converting the whole into a conditional clause. *Vyāsaśaraṅga* has interpreted *Gautama*'s text properly further on (p 1075 II 3-7) while he is refuting *Dhātarekara*'s position.



"who takes care of his deceased brother's estate, and<sup>1</sup> his widow, such a  
 "one after raising up a son for his brother, shall deliver that property  
 "even to that (son)" By this text he indicates this that even when  
 a brother<sup>2</sup> who was separate in estate dies, his wife's claim to his  
 estate is only through<sup>3</sup> an issue, and not otherwise So in the case  
 of undivided property likewise (the same Author<sup>4</sup> says) : "Should a  
 "younger brother have begotten a son on the wife of the elder  
 "brother, the division must then be made equally thus is the law  
 'settled'" (11) Vāṣṭhī<sup>5</sup> also by the text "An appointment shall  
 "not be made through covetousness for the estate", forbidding an  
 appointment to raise up issue to the husband if sought through  
 covetousness for the estate, thereby intimates that the widow's claim  
 to the estate is only through an appointment, and not otherwise  
 (12) in the absence of an appointment, however, a widow is only  
 entitled to a bare maintenance, *vide* the text<sup>6</sup> of Nārada "They  
 'should make provision for the maintenance of their wives till their  
 "death (13) The same it is pretended," will be declared later  
 on by the Lord of the Yogis "And their childless wives, conducting  
 "themselves aright, must be supported; but such as are unchaste should  
 "be expelled and so, indeed, those who are perverse (14) Moreover,  
 since the wealth of a regenerate man is designed for religious uses, the

1 *Uha* (५) is found in the text of *Manu*, and it seems was also the reading in the copy adopted by Mr Colebrooke It is better reading than *ud* (५) - 'or' *Āullāda* in his gloss on this verse adds that this text has a reference to the estate of a separated brother as the one in IX. 120 obviously contemplates a joint estate (see also *Sutodhina* p. 62 l. 25 & *Balambhāṣī* p. 190 l. 31)

2 : : the son so begotten

3 'Through' - *Dvārā* (५) : : she has no independent right in herself

4 : : *Manu* Ch IX. 120 (see note above)

5 : : the objector says that even *Manu* has laid down the adjustment of the conflicting texts

6 Ch XVII. 65

7 Ch XIII. 26 (see above p. 1068 II. 11-14)

8 *Aśa*—This particle is used in many senses Here it indicates disapprobation

The same sense is maintained in the next quotation of an unnamed writer whom *Īśānāśrara* refers to as *Āśāpa* (आशाप) - which the author of the *Sutodhina* notes as 'an indication of disrespect', (p. 5. l. 29 also *Balambhāṣī* p. 101 l. 8)

9 : : *Yājñavalkya* II. 142



succession of women to such property is unfit, because they are not competent to the performance of religious rites accordingly it has been declared by some<sup>1</sup> author "wealth was produced for the sake of solemn sacrifice, and they, who are incompetent for the celebration of these (rites), are not entitled by any property<sup>2</sup>, but (may) receive food and raiment. Wealth has been ordained for sacrifices. Therefore it should be allotted to places concerned with religious duties and not to women, fools or the irreligious"<sup>3</sup>

(15) That<sup>4</sup> is wrong, for authority to raise up issue to the husband is neither specified in the<sup>5</sup> text, 'The wife, the daughter &c' nor is it suggested by the premises<sup>6</sup>. Besides, it may be here asked, is the appointment to raise up issue a reason for the widow's succession to the property, or is the issue borne by her, the cause of her

1 Name unknown. See note above. *Bālakrishna* remarks that by the use of the expression *Ānāpa*, disrespect for the writer is indicated, and it should be noted that therefore the name of the writer has not been mentioned (p 101 l 10)

2 The word in the text is *Rikṣa* which means heritage, or inheritance

3 Here ends the summary of *Dhātarecra*'s argument

The argument of *Dhātarecra* is short is this (1) The wife's capacity to take her husband's estate depends on her desire to begot issue for him and in support of this he cites *Manu*, IX 180, 146 150, *Gautama* Ch 28/22-22, *Varaṇa* 17-18, *Nārada* 13-26, and (2) As the wealth of the twice-born is intended for the performance of religious rites, and as women are incompetent for the same, the devolution of wealth upon the wife is conditional as above

4 *Yājñavalkya*'s refutation of it commences from 'That is wrong'. He does it in several ways, taking each text and explaining its meaning until he arrives at the conclusion at the end of his argument viz 'Of a man dying without issue separate and unmarried his married wife, leading a continent life takes the whole estate' (see further on page 1087 ll 9-11)

For a lucid analysis of the whole position see *Selothana* (63 ll 9-18 Tr p 157 ll 30-34)—'Indeed for the succession of a wife to her husband's estate, is the appointment the cause or, the issue begotten thereby, or is it a special reason, and again of the special reason is appointment the principal cause or the issue or are both of equal importance—these are the six ways in which this question may be looked at, &c.' see Tr p 157 ll 30-34

See the observations of *Mottuswamy Aiyar J* in *Manu vs Channamal & Mad* at pages 118-127, and also *Arasina vs Sami* 9 Mad at p 74 &c

5 i.e. of *Yājñavalkya* II 135 (p 1065 above).

6 i.e. Nor it is pertinent or relevant.

succession? Of these if the appointment alone be the reason, it would follow that, even without having borne a son, she has a right to the estate, and the right of the son (that) born to the estate would not follow. On the other hand if the offspring alone be the cause (of her claim) then in that case as the son alone has a right to the estate, the law (of inheritance) should not be stated beginning "with the wife &c."

(16) As to what is said that women have a title to property, either through the husband, or through the son, and not otherwise, that also is wrong, for it is inconsistent with the following<sup>2</sup> and other similar texts,

"What was given before the nuptial fire, what was presented in the bridal procession, what was given in token of affection, what was received by the woman from her brother, her mother, or her father, are denominated the sixfold 'property of a woman' "

(17) Moreover, on failure of sons of all descriptions, the law (of succession) has been stated commencing with "the wife, daughters &c." Now here, by affirming the right of a widow, who<sup>3</sup> has been appointed to raise issue, the right of the *kṣhetraja* son himself to succeed to the estate is virtually affirmed. But that had already been declared<sup>4</sup> and therefore the wife ought not to be mentioned in the law of succession to (the estate of) one who leaves no male issue

1 Colebrooke translates "subsequently produced", but the expression in the text is *Upanaśaya* which would mean "born." Having regard to the context there would be much difference in meaning in the two interpretations. As the assumption would concede to the widow the right of succession on the ground of appointment, she must be one who has already taken a step in the matter of the appointment, and who would be anticipating the birth of the issue. And her taking a step in the matter of begetting a son for her husband would be a condition precedent for the estate to vest in her. See the answer in refutation by Viṣṇuswara २ विष्णुस्वरा पक्षः &c.

2 Manu Ch IX, 194

3 In the original, the expression has been used as qualifying the widow a sort of a condition precedent to her succession appears to have been laid down. It means—"by declaring the right of succession of a widow on the ground of her appointment &c."

4 The right of succession of sons of all sorts has been independently treated in a separate place and in that connection the right of succession of the *Kṣhetraja* son also has been examined (see p 10461 15 &c above). It would therefore be inconsistent to suppose that the author wanted to treat the right of that son again here. (See Balambhāṭa 191-192 and Subodha 92)

(18) But, it is alleged, the right of the widow, who is authorized to raise up issue to her husband is deduced

The interpretation of Gautama's text examined and proved to be erroneous

from the text of *Gautama* "Of a childless man let kinsmen, connected by *pinda*<sup>2</sup>, by family name, or by descent from the same patriarch share the heritage, or the widow, or she may

seek to raise up offspring (to him)" This too is erroneous, for it cannot be inferred as the meaning of this (text) that, 'if she seek to obtain offspring, (then alone) she may take the goods of a childless man', but that "persons connected by *pinda*, by family name, or by descent from the same patriarch, share the effects of one who leaves no issue, or his widow takes the estate, and such widow may either seek to obtain progeny, or may remain chaste"<sup>3</sup> This is only an alternative

course prescribed for (being adopted or not by) her In other words, an alternative cannot be converted into a conditional For the particle *vā* 'or' denoting an alternative course, does not convey the sense of *yadi* 'if' Moreover, it is fit, that a chaste wife alone should succeed

\* Page 98

A continent wife preferred

to the estate, and not one who has sought appointment, as she has been censured by the law as well as by (the opinion of) the people The succession of a chaste woman alone has been expressed in the text "The widow of a childless man keep

ing unsullied her husband's bed, and persevering in religious observances shall herself present his funeral oblation, and also obtain his entire share'

And an (authority to raise up issue by) appointment has been condemned by *Manu* by the following "By regenerate men a widow must not be authorized

*Nityoga* condemned

1 Ch XXVIII 21 22 note above p 1069, see *Jaimini* vs *Jaiminīyār* *Mudrā* 31 Mad 100 at p 106 *Genapet* vs *Tularam* 36 Bom 86-90 13 Bom L R at p 862 2 See note above on this at p 1071

3 *अग्र्य*—continent, leading a strictly chaste life

4 i.e. two modes of conduct are suggested to her She may either seek male issue by means of appointment or she may remain chaste (see *Balamhātī* p 1921 30 *Subodhini* p 64 II 5-7) *Colebrooke* translates, "This is an instruction to her &c."

5 of *Vrādhā-Manu* see p 1069 II 4-7 above

6 Ch IX 64

"to (conceive by) any other (than her husband); for they who  
"authorise her to (conceive by) another, violate the eternal law,"  
and similar other texts.

(19) As for the text of Vasishṭha<sup>1</sup>: "An appointment shall not  
"be made through covetousness for the estate." This also must be  
interpreted to mean that, "if the husband die unseparated from his  
"co-parceners or re united with them, she has no right of succession to  
"the estate; and therefore an appointment to raise up issue must not  
"be resorted to for the sake of securing the succession to her offspring."

(20) As for the text of Nārada<sup>2</sup>. "And they shall allow maintenance for  
"his women till the end of their lives," since in the text<sup>3</sup>: "The shares  
"of re-united brethren are considered to be exclusively theirs," the re-  
union of co-parceners had been premised, that too<sup>4</sup> must be understood  
as only suggesting a maintenance for the childless women of these<sup>5</sup>  
Nor is tautology to be objected to the text<sup>6</sup>: "The share of re united  
"brethren &c." on the ground that the previous passage<sup>7</sup> i.e. "Among

1 Ob XVII 66      2 Ob XIII 26      3 of Nārada Ob XIII 24.

4 i.e. the text of Nārada, in Ob XIII 26      5 i.e. of the re united co-parceners

6 of Nārada Ob XIII 24 see note below. The two passages are not  
tautologous, because, while the first declares that the *Striddhana* property of  
women should be exempted from partition, the second lays down a clearly separate  
rule whereby provision for the maintenance of the women of such a member is  
made. There would therefore be no fault of tautology (see Balambhāṭi p. 104  
l. 10 and Subodhini p. 94 ll 12 and 13.)

7 Nārada XIII 25. The full text is as follows —

"सहजानं तु यो वपुर्लोकमेव उ द्रव्यते ॥ २४

"सङ्गुणामग्नौ प्रेषा कश्चिद्विपक्षयेत् वा । विजोते च धर्म इत्येव शेषात् सौम्य विना ॥ २५

"गता यावत् कुर्वन् सौम्या उचितमपात् । तस्मिन् शब्दे चतुर्भुक्त्विजुर्मनुजान् ॥ २६

Tr. "That portion which belonged to re-united co-parceners is declared to be  
absolutely theirs." 24

"If among several brothers one should die childless, or become a religious  
ascetic, the others shall divide his property, excepting the *Striddhana*" (25)

"They shall make provision for his women till they die, in case they remain  
faithful to the bed of their husband. Should the women not (remain chaste) they  
must cut off that allowance" 26. [Sacred Books of the East Vol XXXIII Pages  
198-199.]

See *Paninopsya* vs *Papanyagyanop* 4 Mad at pp. 31 and 32, and *Subramanya*  
*Pandya* vs *Swa Subramanya Pillai* 17 Mad at pp 326-327 where, referring to  
(Contd. on next page)

"brothers, if any one die without issue &c." (already) had a reference to re-united members. For, by this explanation of what had been said before, women's separate property is exempted from partition, and a mere maintenance for their widows is at the same time ordained. (21) As for the passage: "And the childless wives of these &c.", that will be explained (further on) as having a reference to the wife of an im-  
potent man and such others

(22) As for the argument, that the wealth of a regenerate man is designed for a sacrifice<sup>3</sup> and women not being competent to the performance of a sacrifice, their succession to the property is unfit, that is wrong. For if every thing which is wealth be intended for sacrificial purposes, then charitable purposes, burnt offerings, and similar matters, must remain unaccomplished. Or again, if it be alleged that since sacrifice here signifies religious<sup>4</sup> duty in general, and

(Contd from last page)

this and other passages the court deduces the right of survivorship by which under the Mitākṣharā the surviving members of a joint family become entitled to an estate which would have become the absolute property of the deceased member, had a partition been made during his life time

It may be noted that the *Dāyabhāga* does not interpret the term "woman" used in this passage as indicating a wife but women actually espoused, but not having the rank of a wife, see *Dāyabhāga* Ch. XI, sect. 1 § 48 also 4 *Mad* at p 32. A distinction among wives by marriage *८ गृहिणी, श्रोतृनी &c* will be found to have been referred to in *Ramesam vs Sanderasingaswami* 17 *Mad* 422 at p 437 and *Brundarasa vs Radhamani* 12 *Mad* 72

1 : : of the male members of the family      2 Yājñavalkya II 142

3 Colebrooke translates "for religious uses", but the word in the original is (यज्ञ) *Yajña*, and in the discussion which immediately follows in the Mitākṣharā the author has used this word in contradistinction from religious purposes generally

4 : : the word sacrifice includes by implication all religious purposes in general, यज्ञम् is that which implies something which has not been actually expressed, implication of something in addition, or any similar object where only one is mentioned "यज्ञमित्युक्ते सति स्वयमेवियज्ञत्वम्"

The three words (यज्ञ, दान and होम) *Yajña* or *Yāga* (sacrifice), *Dāna* (donation), and *Homa* (burnt offering) are explained in (Subodhani p 64) thus—The relinquishment of a thing in favour of a deity is a *Yāga* or consecration, the same object terminating with an offering in the fire is a *Homa*. Bālabhāṭṭa adds a further technical distinction—when the offering is with the accompaniment of यज्ञ it is *Yāga*, without it, it is a simple *Homa*. And a *Dāna* or 'donation', or gift, is that by which the proprietary right is created in another by terminating one's own right of property in the thing transferred.

charitable donations burnt offerings and the rest are acts of religious duty, the applicableness of wealth to those uses is uncontradicted, thus then the other<sup>1</sup> two objects of life i.e. *Artha* and *Kāma* which (also) are to be secured by wealth would remain unaccomplished, and in that case there would be an inconsistency in the following passages of Yajñavalkya, Gautama and Manu 1:\*, “One<sup>2</sup> should not neglect religious duty, wealth or pleasure (such as he can accomplish) according to his capacity,” 20<sup>3</sup> “To the utmost of his power, a man should not let morning noon or evening be fruitless in respect of religious merit, wealth and pleasure” and also<sup>4</sup> “These (i.e. the organs<sup>5</sup> of perception) cannot effectually be so restrained by ‘abstinence’” (23) Moreover if wealth be designed for sacrifices (only) the argument would be reversed, by which it is shown, that the

1 The four objects or purposes of a man's life (वस्तुस्य *Purushārthas*) in this world are (1) *Dharma* (धर्म) religious merit, (2) *Artha* (अर्थ)—attainment of riches or worldly prosperity (3) *Kāma* (काम) desire for sensual enjoyment, and (4) *Moksha* (मोक्ष) final emancipation or deliverance of the soul from recurring births.

These are the four objects which a man has to accomplish during his life in this world. And the objector says that if all the wealth were appropriated towards *Dharma* only, the other two i.e. *Artha* and *Kāma* would remain unaccomplished, and thus there would be a breach of the supreme duty of attaining all the four objects of life.

2 Yajñavalkya *Acarādhyaya* 116 p. 310 above. The passage in the text of Yajñavalkya reads differently from the quotation here given by Vyāsaśrī as वस्तुस्य चर्तुः वस्तुभिः Tr. “should not neglect religious duty &c. in their proper season.” This is made further clear in the passage of *Gautama* next cited, which when freely translated would read thus—Let him not pass idly (any part of the day but) morning midday or evening, (but) according to his ability (he shall make each useful) by the acquisition of spiritual merit or of wealth and by taking his pleasure. And generally the mornings are prescribed for the first and the last i.e. (*Dharma* & *Moksha*), the midday for the *Artha* and evenings for the *Kāma*.

3 *Gautama* Ch. IX 46

4 *Manu* Ch. II 96

5 The organs are enumerated in Verses 89, 90 92 of Ch. II by *Yama*. In Verse 91 ten of these are classified into two groups i.e. ‘Organs of sensation’ (इन्द्रिये) and organs of action’ (कर्तृव्ये) and verse 92 declares mind as ‘the eleventh organ which by its *qashtv* belongs to both kinds.’ The meaning is, that these organs cannot be so effectually restrained by a course of abstinence as they would be by a sense of satiety generated by enjoying them.

( Non use (अस्वप्ना) See note above

careful preservation of gold under the text<sup>1</sup> : "Let gold be 'preserved' " is intended not for religious ends but for human purposes (24) Moreover, if the word sacrifice impart religious duty in<sup>2</sup> general the succession of women to estates is most proper since they also are competent to the performance of auspicious<sup>3</sup> and conservatory acts (25) As for the last text which declares the dependence of women "A woman does not<sup>4</sup> deserve independence," let there be dependence, but where is the objection for the acceptance of property?

(26) How then are the texts such as<sup>5</sup> "Wealth was produced

The Answer 'for the sake of (the performance of) solemn sacrifices' and others to be interpreted? The

answer is that that text is to be interpreted to mean that wealth which was obtained<sup>6</sup> for the (express) purpose of (performing) a sacrifice must be appropriated exclusively to that purpose even by sons and other successors, as it has been declared to be an offence even in the case of sons and other successors, generally<sup>7</sup> in the text<sup>8</sup> 'He, who having received articles for a sacrifice, disposes not of them (for that purpose) shall become a kite or a crow'

1 This is from the 12th Tīpī (Addition) of the 4th Section (Paṇ) of the 7th Chapter (Adhāyaga) of Jaimini. The passage in full from the Veda is as follows — दृष्ट्वा यत्नं नयन् नयन् द्रव्यं नयन् । दृष्ट्वा नयन् नयन् । (Tait. Br. II 11 4 6) This passage enjoins the careful preservation of gold lest it lose its brightness and be tarnished. The question raised on it is whether the observance of the precept be essential to the efficacy of sacrifice or serve only a human purpose and the result of the reasoning is that the precept refers to the person and not to a sacrifice. Vyāsaśaṅkara says that this demonstrated conclusion or *Siddhānta* (सिद्धन्त) will be contradicted if it were assumed that gold is intended only for a sacrifice (see Subodhani p. 63 66 Tr. p. 160-163 and Balaubhatī p. 190 Anantasharma No. 24 p. 181) 2 See note above p. 197 n. 4

3 दृष्ट्वा &c. see note on p. 1014 n. 4 above.

4 नयन् &c. is not fit to be independent. See *Antyāśau vs Jucker* 1 Bom. 121 at pp. 127 and 124 as regards the capacity of a woman to hold property and to enter into a contract without the husband's consent or ratification. But it would be otherwise if the property be immovable or be a property producing a periodical income. See *Antyāśau vs Jagda* 104 30 Bom. 220 at page 231 40

5 See above p. 1013 B 1-3

6 Acquir'd : i.e. in charity & by donation &c. see Balaubhatī p. 196 B 5-7 Subodhani p. 90 B 6-8

7 &c. without particularisation (अविवक्षित)

8 See *Manu* Ch. II 20

- (27) Even as to what has been said by Kātyāyana "Heirless property goes to the king, deducting however a subsistence for the females as well as for the funeral charges; but the goods belonging to a venerable priest<sup>1</sup> let him bestow on venerable priests," i. e. heirless property or wealth which is without an heir to succeed 'goes to the king' i. e. becomes the property of the sovereign 'deducting, however, a subsistence for the females as well as for the funeral charges'; it means that after excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral charges such as the funeral repasts and other obsequies in honour of the (deceased) owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a 'venerable priest,' deducting, however, a subsistence for the females as well as the charges of obsequies, let him bestow on a venerable priest." (28) But even this relates to women<sup>2</sup> kept in concubinage, for the term employed is 'females'.<sup>3</sup> The text<sup>4</sup> of Nārada likewise relates to women of the harem since the word used is women<sup>5</sup>. "Except the wealth of a *Brāhmana*, but a king, who is attentive to the obligations of law<sup>6</sup> should allot a maintenance to the women of such a person. Thus has been declared the law of inheritance." (29) But since the term *patni* is here<sup>7</sup> employed, the succession of a wedded

1 A *Śrotrya* is a learned *Brāhmana*. "One is a *Brāhmana* merely by birth, he is called a *dnyā* after the performance of rites, he becomes a *vyra* by learning, and is designated a *Śrotrya* when he has all the three."

"अथवा नास्तीति चेत् सारस्वतीज उच्यते । विद्वेत्तुं यति विद्वत् त्रिभि ओषिषि उच्यते ॥"

It is such a one whose wealth has been unanimously declared to be unfit to be taken by the king.

Balambhatta reads as *Śrotryaśloka-patidāyet* : i. e. "should devote it for the use of" a *Śrotrya* *Brāhmana*.

2 अस्वस्वस्वस्वस्वम् See further on Yajñ II 290 and the *Mittāksharā* thereon.

3 The word is *śeṣit* which is derived from *युज्* 'to serve'.

4 Ch. XIII 52.

5 The word is *Stri*. It is derived as *स्वस्वस्वस्वस्वम्*. The text of Nārada refers to women generally.

6 The last portion of verse 54 is [In default of all, that (wealth) goes to the king"] and V 5a begins with the exception to this last clause.

7 यमसत्यम् — i. e. intent on following the dictates of *Dharma*.

8 Here : i. e. in Yajñ II 13a see pp 1063 I 9 above.



wife, who is chaste is not inconsistent with those passages (30) Therefore it is established as the right interpretation (of this passage), that when a man who was separated (from his co-heirs) and not re-united (with them) dies leaving no male issue, his wife takes the estate in the first instance. For<sup>1</sup> partition has been discussed,<sup>2</sup> and re-union is to be subsequently considered. 5

(31) It must be understood that the explanation proposed by Śrīkara and others restricting (the widow's succession) to a small portion of property is refuted by this<sup>3</sup>. For even where there are legitimate sons it is provided whether the partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the sons. "If he make the allotments equal, his wives must be made partakers of equal portions"<sup>4</sup>. And again "Of heirs dividing after (the death of) the father, let the mother also take an equal share"<sup>5</sup>. Such being the case it is a mere error to say that the wife takes nothing but a subsistence from the wealth of her husband who died leaving no male issue<sup>6</sup>. 10 15

(32) But if it is argued that under the terms of the texts (above cited) "his wives must be made partakers of equal portions" and "Let the mother also take an equal share," a woman takes only as much wealth as is sufficient for her maintenance, that is wrong. For the words *ama* 'share or portion', and *sama* 'equal', would thereby be deemed meaningless. 20

(33) Or again it may be argued that if the wealth be great, she takes precisely enough for her subsistence, but if small she takes a share equal to that of a son—that too would be wrong, for variable- 25

1 What the author means is this—that the widow succeeds to all description of property, except those which form the subject of partition in verses 114-126 above and also those which form the subject of re-union in verses 138 & 139. *Jasoda Kesi vs Shree Prasad Singh* 17 Cal 33 at p 36.

2 From Verse 114 to 127 above.

3 i. e. by the argument which follows.—See *Bajambhatī* p 197, l 15 and *Sabodhinī* p 66 ll 25 etc.

4 *Yājñ* II. 118, p 997, ll 14 16. 5 *Yājñ* II 123, p 1027, ll 11 12.

6 For a lucid explanation of this passage see *Sabodhinī* p 66 lines 25 to 32 and p 67, ll 1 3 and *Bajambhatī* p 197.

ness<sup>1</sup> in the precept will be the consequence. Since if the estate be considerable the texts (above cited) viz. "his wives must be made partakers of equal portions" and "let the mother also take an equal share", would be construed, regard being had to another text<sup>2</sup> also which lays down  
 5 a bare maintenance, to suggest a share adopted for a bare support. But if the estate be inconsiderable, the same passage would (have to be construed to) indicate the assignment of a share equal to a son's

(34) Thus, in the instance of the *Chāturmāsya*<sup>3</sup> sacrifices, in the  
 10 An objection disquisition (of the *Munāmsu*) on the passage  
*Dvayoh pranayanti*, where it is maintained by  
 the opponent that the rules for the preparation of the sacrificial fire  
 at the *Soma-Yuga* extend<sup>4</sup> to these sacrifices, and as a consequence of  
 it the injunction "not to construct a Northern Altar (*Uttara Vēdi*)  
 15 "at the *Vasvadeva* sacrifice nor at the *Svanasriya* sacrifice, must be  
 "understood as a prohibition of such altar<sup>5</sup>, but it is answered by an  
 advocate<sup>6</sup> of the right opinion that it is not a prohibition<sup>7</sup> of that  
 'altar at the first and the last parts as suggested  
 "by extending to these sacrifices the rules for  
 'preparing the sacrificial fire at the *Soma-yuga*, but an exception to

1 It is a rule that "a single sentence once uttered carries only one meaning" *सर्ववक्ति शब्दं सर्ववचनमप्यपत्तिः*, and if the texts cited above were to be interpreted to have one meaning in case where the estate is large, and quite another meaning where the estate is small, that would be contrary to the universal rule of interpretation stated above i.e. it would lead to the *सर्ववदेद् दोषः* (See Subodhani p. 97 ll. 5-10 Balambhatti p. 197 ll. 26-30)

2 Viz. Narada Ch. XIV. 26 "And should provide for the maintenance of his women till their death" (See p. 236 l. 21 above) *पत्यं पत्यस्य मृतौ तन्जीवाम् जीवनस्यार्थं* (Subodhani p. 67 l. 9 Balambhatti p. 197 l. 29)

3 *Chāturmāsya* is the name of the sacrifice performed every four months viz. at the beginning of *Kārtika*, *Fālguna*, and *Āshāḍha*. It consists of four parts in order viz. (1) The *Vasvadeva*, (2) the *Varuna-Praghñā*, (3) the *Sāḍhamedha*, and (4) the *Svanasriya*.

4 An *Adhōḥ* (अधोऽर्थः) is an extended application, or an application by analogy. See note 4 on page 1077 above. The argument here is that the general practice prevailing at the *Soma-yuga* may, by analogy, be applied here.

5 i.e., the Northern altar.

6 Mark the expression. It is the position of the follower or apologist of the right opinion, and not the right opinion itself, which is given at the end of the discussion.

7 *Pratighāḥa*—a prohibition, a cutting down, delimitation.

'the express rule 'prepare an *Uttara-vedi* at this sacrifice','' bringing in the construction of the *Uttara-vedi*, it is urged in reply by the opponent, that (even then) variableness in the precept must follow,

An objection again since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the (four) periods of sacrifice, and commands a construction of it at the two middle periods independently<sup>1</sup> of any other maxim. But it is finally shown as the

Final conclusion right doctrine, for the purpose of obviating<sup>2</sup> the objection of 'variableness in the precept,' that the prohibition of the northern altar at the first and last of the periods of sacrifice is a *Nityānuvāda* and that regarding the injunction *Dwayoh<sup>3</sup> pranayanā* as an *Arthavāda*<sup>4</sup>, the injunction "prepare the *Uttara-vedi*

1. i. e. without reference to any particular maxim, but quite by a reasoning on general principles

2. Mark the word *bhayāt*—apprehension. It is such misties very critically conceived and expressed which demonstrate the high position of *Vyākaraṇika*. Even the remote apprehension of a variableness in the precept is to be avoided, and for this, any other minor blemish may be accepted.

3. अत्राह an explanatory repetition of, or reference to, what is already mentioned, a supplementary repetition as distinguished from an injunction or *Vidhi*

अर्थाह is a declaratory assertion, whose purport is either praise or blame (मातृवर्णिद्वयार्थाह अर्थाह) *Arthavāda* passages are of two kinds, being either complements of *Vidhi* passages, or complements of *Nyāyika* passages. It is again of three kinds i. e. *Ganacāda*, *Anuvāda* and *Dhātārthavāda*

विधि एवाह एवाहवर्णिद्वयार्थाह । अर्थाहद्वयार्थाहद्वयार्थाह ॥

4. The above discussion is based on what is known as the "*Dwayoh pranayanā*" Maxim of the *Mīmāṃsā*. For a full exposition of the passage in the text of the Maxim and its bearing on the text, see Sukodhinupp 67-68 and Bālabhāṣṭya which, as usual, elaborates the points in the *Śubodhana*. The following, in short is the summary of the discussion

General remarks. The two sacrifices referred to in this discussion are the *Soma yāga* and the *Chāturmāsya*. The *Chāturmāsya* sacrifice has been explained in note 3 on page 1082 above. The principal sacrifices are the *Soma*, the *Darsa-Pūrnamāsa* and the *Agnistotra*, these are known as the *Prakṛitas* (प्रकृति), or Principal Sacrifices. The *Chāturmāsya* is a 'special sacrifice' and falls under the *Darsa-Pūrnamāsa*. Such a one is called a *Vāśī* (वाशि) or 'a special rite'

*Pranayanam* is the carrying of the fire from the *Gārhapatya* altar to the *Āhavanīya*

(Continued on next page)

"at this sacrifice" Commands the construction of the northern altar at the two middle periods only viz the *Varunaprahāṇa* and *S'ākamedha*

(Contd from last page)

Lastly, the construction of the 'Northern altar' has been ordained in the *Soma* sacrifice only, and not in the *Darsa Pāruṇmāsa* sacrifice

These are some of the general rules of practice ordained at the sacrifices

Then there are the following texts of the *Veda*, in reference to the *Chāturmāsya* sacrifice, viz,

(1) उपान द्यमि 'Upa atre dyamī' Tr 'In this (i.e. the *Chāturmāsya* sacrifice) the Northern altar is to be established "

(2) न वेवदेवे उत्तरेदिग्वसिन्नि न द्यमिद्वि—'Na Vaitadeve uttarēdigvasinī na dyamīdvī' Tr 'The Northern Altar is not to be established either in the *Vaitadeva*, or in the *Sāmānya* portion

(3) उरु वा णौ दहसि दहस्यवासः शम्भवेति द्वौ णवर्गौ—'Urū vā ṇau dhasya yaj Varuna Prahāṇa Sākmedhascheti Dvayor Ṣṇavargau' Tr

Tr 'The two legs (i.e. mainstay) of the *yajñ* are the *Varuna Prahāṇa* and the *Sākmedha*, the two *man* have fire kindled in them

Taking these texts and having regard to the general rules of sacrifice according to which the *Pranayama* in the case of the *Soma* alone has been laid down in the *Śruti*, while there is no provision for the same in the case of the *Darsa Pāruṇmāsa*, the objector or *Purva Pīṭha* says that the procedure to be adopted for a *Pranayama* should be that prescribed for the *Soma* inasmuch as it is *समन्त* and not the *अग्रतः* one in the case of the *द्वर्गयज*

Of the three texts quoted above, No. 1 lays down that the 'Northern Altar' which is invariably connected with fire kindling, should be consecrated in the *Chāturmāsya* *Yajñ*. This is in the nature of a *general rule* or *Vidhi* which has been cut down by No. 2, according to which the 'Northern Altar' is not to be consecrated either at the first or the fourth quarter of the *Chāturmāsya* sacrifice, viz in *Vaitadeva* and *Sāmānya*

No. 3, has some phrase for the 2nd and 3rd quarters viz *Varuna Prahāṇa* and *Sākmedha*, and then it says that the fire kindling should take place in the two (i.e. these two). Shortly stated the position is this

(1) The Northern Altar should be established

(2) But not in the case of the first or the fourth quarters

(3) In the 2nd and 3rd quarters fire should be kindled.

These rules have been construed to yield the following plain result. The first is a 'general rule' or a *Sāmānya Vidhi*. The second is an exception to it and the third is a necessary deduction following as the combined result of Nos. (1) and (2). Further, the third is in the nature of an *Atithatā* showing the reason why the second and the third are not subjected to any exception in respect of fire kindling.

(Contd on next page)

(35) Again as to the doctrine, that from the text of Manu<sup>1</sup> "the father shall take the inheritance or the brothers."

Another position  
based on certain  
texts

"Of him who leaves no male issue," as well as from that of Śaṅkha "The wealth of a man, who departs for heaven, leaving no male issue, goes

5

"to his brothers; in their absence his parents shall take, or his eldest wife" The rule is deduced that the wealth of a man leaving no male issue goes to his brothers; and from the text: "Let them provide for the support of his women for life," it also becomes established that the wife obtains (as much) wealth (as is) sufficient for her maintenance This being so (it follows that) if a rich man die leaving no male issue,

10

(Contd from last page)

The above construction harmonises the three texts and does not introduce any conflict such as would result in an option

But the opponents argue thus We concede that the first is a general rule or *Vidhi*, and the second is a special negative *Vidhi* by way of an exception But the exception is as regards the 'Northern Altar,' and not as to the kindling of fire which may be kindled under the general procedure laid down in the *Soma* sacrifice, and thus they further contend that the clause *Dvayoh Praṇyanta* in No 3 is to be construed as being intended to apply also to the first and the fourth quarters of the sacrifice by the *Parvadeva* and the *Sundārīya*

In short, what they maintain is that all that No 2 lays down is that the 'Northern Altar' should not be established in the case of the *Parvadeva* and the *Sundārīya* quarters This does not prohibit the kindling of the fire, which has been presented quite generally in No 3 Thus they say, here there is a virtual conflict between the text, and thus there is scope for the rule of option (*Vidatpa*) to prevail, and taking advantage of this, they contend that the northern altar should be constructed in the *Parvadeva* and the *Sundārīya* quarters

To this the *Rādākhāṇḍa* or the upholders of the correct opinion, reply that this method of argument involves the fault of "variableness in the precept" (*Vidhi Vairāmya*), and cannot therefore be allowed For, the opponents, once construing No 1 as a "general rule of *Vidhi*" with No 2 as an exception They construe it again as a "general rule" side by side No 2 which they now construe as an absolute rule creating contradiction They get the fire by the first view and altar by the second which is faulty and cannot therefore be allowed

As stated at the beginning of this note the reader will find a very lucid exposition of this in the short but clear statement in the *Subodhin* pp 67-69 Tr pp 168-174 \*

According to this maxim, it would be wrong to construe a rule in one way in one place, and in quite another way in another place

- the wife takes as much as is adequate for her subsistence, and the rest the brothers take, but (that) if the estate be barely enough for the support of the widow, or less than that then to provide (for the case of) a conflict (which might arise) viz whether the wife alone should take or the brothers also, the text<sup>1</sup> "the wife, the daughters &c" has been propounded to demonstrate the potentiality of the (claim of the) first (claimant). This opinion too the Reverend Teacher<sup>2</sup> does not tolerate. For he interprets the text<sup>3</sup> 'Of him who leaves no male issue the father shall take the inheritance, or his brothers' as laying down an option and not as laying down an order (of succession) but only as indicating the right (of persons) in the matter of inheritance, and that that text becomes applicable when the group of heirs such as the wife and the rest fail, and also that the text of Śankha relates to reunited brothers (36) Moreover, it does not appear either from this text or from the context that it is relative to an inconsiderable estate. If (the concluding portion of the text is) on failure of the first among these "the next in order is heir" be restricted to the case of a small property,<sup>4</sup> by reference to another passage in two instances (viz of) the widow and the daughters,<sup>5</sup> but (be understood to) relate to wealth generally in the case of 'the father and the rest' the consequent defect of the variableness in the precept referred to above affects this interpretation. So this is<sup>6</sup> a mere trifle (37) As for the text of Harita "If a woman become a widow in her youth, be ill behaved,<sup>7</sup> maintenance must in that case be given to her for the support of life that too is intended for a denial of the right of

1 Of Ilya II 135 see p 106a

2 i.e. Viśvarupacharya (Subodhinī & Bālabhāṭṭi)

3 Of Manu Ch IX 18a

4 On page 94 l 4 for कस्तान्नापदक्षयवनिषयम् read विषयम्

5 i.e. They should provide for their maintenance &c. Nirada Ch I XIII "C See n above 236 and p 21

6 This वस्तिविषय does not appear in the translation by Mr Colebrooke

7 वयम् Aśvīnī Col brooke translates 'Lead strong' Mr Mandlik translates as "If a woman becoming a widow in her youth come to be suspected of unchastity &c (p 10 R 9 10) Bālabhāṭṭi renders it as 'excruciated' The dictionaries translate the word as ill-conducted, unchaste unfaithful when used in



## [ Colebrooke Sect II ]

## [ Right of the Daughters and Daughter's Sons ]

(1) (On failure of her, the daughters (inherit)) (The plural is

The daughter

used in "the daughters" to suggest the equal or unequal participation of daughters alike or dis-

similar by class) (2) Thus Kālyāṇa says "A wife takes the  
"estate of her husband : e such a one as does not lead an incontinent  
"life, and in default of her the daughter, if she be unmarried then"  
And also Brhaspati "The wife is pronounced (to be) the successor to  
"the wealth of her husband, and, in her default, the daughter As  
"a son, so does the daughter of a man proceed from his several  
"limbs How then should any other person take her father's wealth?"

(3) Here, however, (if there be a competition between a married  
and an unmarried daughter, the unmarried one takes the succession)  
under the specific provisions of the text above cited, viz "In default of  
"her, the daughter (takes) if she be unmarried then" (4) Moreover,  
(if the competition be between an enriched and unprovided daughter, the  
unprovided inherits, and on failure of such, the enriched one succeeds)  
For the text of Gaṇṭama is "A woman's *stridhana* goes to her  
'daughters, unmarried or unprovided' is equally applicable in the  
case of the father's estate (5) (Nor, must it be supposed that this  
relates to the appointed daughter for in treating of the male issue,

1 According to the Mitākṣharā the right of a daughter is based on consanguinity and not religious merit as is the case under the *Daya Bhāga* under which no daughter could inherit unless she was capable of bearing male issue who would then offer funeral oblations to the maternal grandfather, so that widowed daughters having no male issue or daughters who have an incapacity for bringing any but daughters into the world are excluded under the *Dāya Bhāga* (See Ch VI 2 1) *Prasanna Devi vs Chandra Sekhar* 43 All 450 in this respect the *Smṛti Chandrika* in giving the reason of this rule appears to adopt the same line of reasoning (See Ch VI sect II p 12) But the Madras High Court held this to be a merely moral precept and has followed the Bombay ruling in *Adayappa vs Sudraa* 4 Bom 104 at p 111 in *Sammam Ammal vs Vuttammal* 3 Mad 205 at p 209 See also *Jednamal vs Isanayyan* 31 Mad 100 at p 108, and also *Isanayyan vs Isanayyan* 1 Bom. H C Rep (O O J) at p 12.

Daughter's daughter's son is preferable to the sister's son *Kalmitthan Pillai vs Aramamutha* 8 Mad 238



an appointed daughter and her son have been pronounced equal to an *dhruva* son (by the text) "Equal to him is the *putrikā-sutah*"

(6) By the import of the particle *cha*, "also", on failure of daughters the daughter's son succeeds to the estate. Thus  
The daughter's son Vishnu<sup>2</sup> says. "If a man leave neither son, nor  
"son's son, nor issue, the daughter's sons shall  
"take his wealth For, in regard to the (right to the) performance of  
"obsequies of ancestors, the daughter's sons are considered as son's  
"sons" Manu<sup>3</sup> likewise declares, "By that male child, whom a  
"daughter, whether not appointed or appointed, shall produce from

1 Yajñ II, 126, see page 1015 l 9

2 Referring to this passage, and to *Dāya-Bhāga* Ch XI sec II pp 18-20, the Madras High Court remarks in *Korappa Nachar vs Sankar Narayana Chetty*, 27 Mad 300 at p 311 —

"The difference in his (i.e. daughter's son's) position under the old law and the present law is that under the former if he is the son of an appointed daughter (and only one such daughter can be appointed) he becomes by a fiction of law the son or son's son of the maternal grandfather, and as such, a member of the grandfather's family, and is not a member of his own father's family" (see note 3 on p 1046 above) "Under the present law he is a member of his own father's family, but he is regarded also as good as a son's son to his maternal grandfather", see also the observations of the Court in *Jamiatram vs Bai Jamma*, 2 Bom II C R (A C J) 11, at p 14 seq as to whether a daughter's interest during the lifetime of a widow is a vested one or a merely contingent estate See also *Vishnu vs Ramdas* 24 Bom 317-2 Bom L R at p 18 and *Muthuvadu-ganatha Tetar vs Periasami*, 16 Mad II, at p 16 to 17

3 Ch IX 146

4 Here the claim of the daughter's son to the estate of the maternal grandfather has been demonstrated Bālabhāta argues a claim for the daughter's daughter on the analogy between succession to the *stridhāna* and inheritance of the paternal estate (See Bālabhāta p 207 II 16-29 & p 223 l 26)

There is no support in *Yājñavalkya-Smṛiti* for the right of the daughter's daughters as heirs coming immediately after the daughter's sons Nor is there any direct authority in the *Mitākshara*. But Bālabhāta refers to the special text of *Yājñavalkya* (II 145) on the succession to *stridhāna* and to the text of *Nārada* viz "The daughters take the residue of the property of the mother," and maintains that on the same grounds the inclusion of the daughter along with the daughter's son in the particle *cha* 'and', in the line of succession is proper "And," adds the author of Bālabhāta "this is proper also, as in the case of a succession to *stridhāna*, the order is daughter daughter's son, grandson &c, so

## [ Colebrooke Sect. II ]

[ Right of the Daughters and Daughter's Sons. ]

(1) (On failure of her, the daughters (inherit).) (The plural is

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used in "the daughters" to suggest the equal or unequal participation of daughters alike or dis-

similar by class.) (2) Thus Kātyāyana says: "A wife takes the estate of her husband, i.e. such a one as does not lead an incontinent, life; and in default of her the daughter, if she be unmarried then." And also Bṛhaspati<sup>2</sup>. "The wife is pronounced (to be) the successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

(3) Here, however, (if there be a competition between a married and an unmarried daughter, the unmarried one takes the succession) under the specific provisions of the text above cited, viz: "In default of her, the daughter (takes) if she be unmarried then" (4) Moreover, (if the competition be between an enriched and unprovided daughter, the unprovided inherits; and on failure of such, the enriched one succeeds.) For the text of Gautama<sup>3</sup> viz: "A woman's *stridhana* goes to her daughters, unmarried or unprovided" is equally applicable in the case of the father's estate (5) (Nor, must it be supposed that this relates to the appointed daughter<sup>1</sup> for, in treating of the male issue,

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Daughter's daughter's son is preferable to the sister's son *Kahmūḥan Palla vs Aramamuthu* 55 Mad. 238

2 Ch XXV 55-56

3 Ch XXVIII 22

an appointed daughter and her son have been pronounced equal to an *Aurasa* son (by the text) "Equal to him is the *putrāś-sutah*"

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The daughter's sons: **Vishnu**<sup>2</sup> says "If a man leave neither son nor son's son, nor issue, the daughter's sons shall take his wealth. For, in regard to the (right to the) performance of obseques of ancestors, the daughter's sons are considered as son's sons" **Manu**<sup>3</sup> likewise declares, "By that rule child<sup>1</sup>, whom a daughter, whether not appointed or appointed, shall produce from

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3 Oh IX 136

4 Here the claim of the daughter's son to the estate of the maternal grandfather has been demonstrated. **Bajambhatta** argues a claim for the daughter's daughter on the analogy between succession to the *śrādhāna* and inheritance of the paternal estate. (See **Bajambhatta** p 207 II. 10-29 & p 223 l 26)

There is no support in *Yajñavalkya-Smṛiti* for the right of the daughter's daughters as heirs coming immediately after the daughter's sons. Nor is there any direct authority in the *Mitākshara*. But **Bajambhatta** refers to the special text of *Yajñavalkya* (II 145) on the succession to *śrādhāna* and to the text of *Nārada* viz "The daughters take the residue of the property of the mother," and maintains that on the same grounds the inclusion of the daughter along with the daughter's son in the particle *cha*, "and", in the line of succession is proper. "And," adds the author of **Bajambhatta**, "this is proper also, as in the case of a succession to *śrādhāna* the order is daughter daughter's son, grandson &c, so

"(a husband of) an equal class, the maternal grand-father becomes  
"the grandsire of a son's son; he shall offer the funeral cake and  
"take the estate."

[Colebrooke Sect. III]

[Right of Parents]

(1) On failure of these (heirs) the two parents i.e. the mother and  
the father are successors to the property.

(2) Although the order, in which parents succeed to the estate, do

(Contd. from last page)

"in the case of a succession to the father's estate, the son, grandson, his son,  
"widow, daughter, daughter's son, daughter's daughter &c would be the order  
"inferable by analogy, having regard to (the doctrine of) propinquity Vyākṣeṣavāda  
"also having referred to the text of Gautama (Ch.XXVIII s 22), viz "a woman's  
"stridhāna goes to her daughters whether married or unmarried" as being  
"equally applicable in the case of the father's estate, this right of the daughter's  
"daughters to succeed is also approved by law. Otherwise, the daughter's  
"daughters having been referred to first (i.e. in the succession to the mother's  
"property) and there being no reference to them, nor their inclusion here, it  
"would come to their entire exclusion as heirs at all." And so Bālakṛishṇa  
maintains that the daughter's daughter is also an heir immediately after the  
daughter's son. And this is proper.

West and Bulmer in their Hindu Law [third Edition p. 130 (c)] have a note  
on this subject. It does not refer in this line of reasoning of Bālakṛishṇa, and is  
unconvincing as a ground for excluding daughter's daughter. Further on, at  
p. 477, a precedent from Thane has been quoted, in which the answer simply  
states in general terms that the second cousins and the grand-daughter are  
not heirs.

The exclusion of this class of heirs i.e. daughter's daughter from their proper  
place in the order of succession would thus appear to be not based on sound  
reasons. Act II of 1929 has now definitely placed her in the line of heirs.

1. Mark the following passage from the Subodhina which serves as a very  
good introduction to the passage in the Mitāksharā. See Subodhina p. 70 II  
31-33. Indeed, in the absence of the daughter or the daughter's son, the parent's  
right of succession is laid down. However, as the term 'parents' *Pitaraḥ* is in  
the *Plaspeṣa* unresidual-compound form i.e. retaining the one member of the  
compound and omitting others, the question would arise whether the parents take  
conjunctly or severally, and again whether the order of succession is optional or  
regulated and fixed.

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not clearly<sup>1</sup> appear, since a 'conjunctive compound' is declared<sup>2</sup> to present the meaning of its several terms at once, and the *ekāśeṣa*<sup>3</sup> is regarded as an exception to that, still as the word 'mother' stands first

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To this Viṇāśvara gives an answer that of the two parents, mother and father, the mother has preference. His reasons may be summarised thus —

- (1) In dissolving the compound word *Pitarau* the word *Mātā* comes first
- (2) Even when the *ślokaśā* compound is not used, and the ordinary *Dvandvīya* is used, as in *Mātāpitarau*, the word *Mātā* comes first
- (3) The text *al o* gives the same order, whether the express or the implied sense is taken
- (4) In the case where a man has several wives and several sons by each wife, the propinquity between a particular son and his mother is greater than between him and the father. See *Bajambhavi*. *Subodhinī* attempts an explanation on the same lines as adopted by the *Mistākharā*.

- (2) Even when the *akalepha* compound is not used, and the ordinary *Dwandwa* is used, as in *Mātāpāraṇa*, the word *Mata* comes first

- (3) The text of  $\phi$  gives the same order, whether the explicit or the implied sense is taken.

- (4) In the case where a man has several wives and several sons by each wife, the propinquity between a particular son and his mother is greater than between him and the father. See Bājambhatti. Subodhina attempts an explanation on the same lines as adopted by the Mīṭākharā.

This is not quite clear. *Vijñaneshvara* says that because the father is a common parent of all, and the mother a particular parent, therefore she has greater propinquity, a reasoning which is not quite convincing. See note further on *Ashobhar* vs *Dakshar*, 6 Bom 511 at p 511, the rule of propinquity alone having the final determining force the mother has preference. See *Anath* vs *Harisala* 23 Bom at p 307. *Lalubhar's* case 2 Bom at p 439.

N B Mother does not include the step-mother *Paria Na* vs *Surgam* 18  
All at p 224

The propinquity here referred to is different from the propinquity elsewhere in the *Vaidikāgā*. See *Vaidikāgā* vs *Jamras* 24 Bom 317

1. . . . . from the text of Yajñavalkya II 133-136 above p. 1005

2 According to the rule of *Fāṣim*, (II 2 29) the *Dvandva* compound is formed when two or more words occur with the import of the conjunctive 'and' च *cha*. But it is not every combination of words joined together by the conjunctive particle *cha*, 'and' that goes to make up the *dvandva* compound. The conjunctive *cha* has the power to indicate four principal meanings, viz. (1) Community of reference (सम्यय) (2) Collateralness of reference (सम्यय) (3) Reciprocal (इकस्मिन्) and (4) Causation (सम्यय) and it is only in the last two of its meanings that the particle *cha* helps to make up a *dvandva* compound.

3. सर्व—(the universal) is a species of the dwandwa or conjunctive compound. Literally it means 'the one verum' (one). It is a compound in which one member is retained and all the others are omitted, the one member which is retained being expressive of all the others that are omitted. सर्व मनुष्याः सर्वे मनुष्याः in the compound of सर्वे मनुष्याः which is compounded of two words: the

(C. 8'4 en rect page)

- in the sentence<sup>1</sup> in which the compound is resolvable, and also (since) in the case where the *ekasheṣha* (compound) is not used, i.e. in the regular<sup>2</sup> compound expression (*mātūpitaraṇ*, i.e. mother and father), the word mother is stated first, it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance, and, on failure of her, the father (3) Besides, the father is a common parent to the other sons also, but the mother is not so, and since her propinquity is consequently greatest it is just that she should take the estate in the first instance conformably to the text<sup>3</sup> "to him who" "is the nearest among the *sapindas*, the inheritance shall belong". (4) Nor is the claim in virtue of propinquity restricted to *sapindas*<sup>4</sup>

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*Mātā cha pitā cha*, only one word viz. *pitā* is retained and it is expressive of the other which is dropped अग्रे अतः, are other instances. It may be noticed thus, that according to strict grammatical interpretation any plural form is an instance of *ekasheṣha*, e.g. गण गणानां &c. This *ekasheṣha* is optional and the regular form may be retained e.g. instead of *Pitarau* (*ekasheṣha*) it may be *Mātūpitaraṇ* (*dvandwa*). See Pāṇini I 2-70

1 *Vigraha* is the dissolution of the compound and a *signān vākyā* is the sentence in which the dissolution of the compound is brought out. The compound expressions *pitaraṇ* as well as *Mātū pitaraṇ* are both resolvable into the component elements in the same way: e.g. *Mātā cha pitā cha*—Mother as well as the father.

2 See Pāṇini II 2 84. This Sūtra states the rule that a word form which has fewer vowels is placed first in a *dvandwa* compound and the *Uārtika* on this enumerates several cases in which certain word forms are placed first e.g. names of seasons and stars consisting of equal syllables, a word consisting of light vowels a word expressive of the more honourable of the two (अग्रहण) &c., are placed first and this last class is illustrated in the *Mañbhāṣya* of Patañjali and in the *Āśāśā Vṛth* of Wāmana by this very compound word viz. *Mātūpitaraṇ*.

3 Of Manu Ch. IX 187. See *Babulal vs Nankulal*, 22 Cal 320 at p 346 *Chinnarasani Pillai vs Kuvay Pillai*, 35 Mad 152 at p 158, 159.

4 *Sapinda*. See note (1) on p 1071 (*Supra*). Colebrooke translates Kinmen allied by funeral oblations and *Samānoddā* as 'kindred connected by libations of water'. See *Unani Bahadur vs Ulan Chani* 6 Cal 119 at p 125 (I B) as regards the meaning of the terms *sapinda* see pages 124 to 127 where the Court observes at p 127 "These considerations leave no room for doubt that the author of the *Mīlākṣharā* has used the word *sapinda* here not in the sense of 'connection by funeral oblations' but of connection by particles of one body as defined in the *Āśāśāśā* (Verse 52 &c.)". See also *Lakṣmanammal vs Tiruvengada* 6 Mad 241 at p 245.

only but on the contrary, it appears from this very text, that the rule of propinquity alone is effectual, since even in the case of the *samānodakas* and other relations, a claim to inheritance arises without any<sup>1</sup> exception (5) (Therefore, since, of the two parents (the mother and the father), the mother alone is the nearest in propinquity, it is more proper that she should take the estate. But on failure of her, the father is successor to the property<sup>2</sup>)

[Colebrooke Sect IV]

\* PAGE 96, (Right of the brothers)

(1) On failure of the father, the brothers<sup>3</sup> shall share the estate. 10  
 And likewise Manu<sup>4</sup> says "Of him who leaves no male issue, the father<sup>5</sup>  
 " shall take the inheritance or the brothers"

1 अविभक्तः = without any differentiation or distinction, quite generally

2 The following note by Mr. Colebrooke is important. The commentator *Bālamīkṣita* is of opinion that the father should inherit first and then the mother, upon the analogy of more distant kindred where the paternal line has invariably the preference before the Maternal kindred, and upon the authority of several express passages of law. *Nanda Pandita*, author of the commentaries of the *Mitākshara* and on the institutes of *Vishnu* had before maintained the same opinion. But the older commentator of the *Mitākshara* *Vishnukarna Dhalla* has in this instance followed the text of his author in his own treatise entitled *Madana-Pārijāta*, and has supported *Yajñavalkya's* argument both there and in his commentary named *Subodhina*. Much diversity of opinion does indeed prevail on this question. *Strisore* maintains that the father and mother inherit together and the great majority of writers of eminence (such as *Aparāṇḍa*, and *Kamākṣara* and the authors of the *Smṛti Chandrikā*, *Madana Ratna* and *Vyākṣara Mayukha* &c.) give the father the preference before the mother. *Jamunādhara* and *Raghunandana* have adopted this doctrine. But *Vāchaspathi* differs on the contrary contends with the *Mitākshara* in placing the mother before the father, being guided by an erroneous reading of the text of *Vishnu* (Sect I § 6) as is remarked in the *Parasutodaya*. The author of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable (See *Pāṇini* II 2 35 p 1092 note 2 above) than the father she inherits, if she be less so, the father takes the inheritance.

3 *Nanda-Pandita* and *Bālamīkṣita* interpret the term brother as including sisters also. Vide *Pūṇa* I 2 68. According to them, the brothers succeed first, and in their default, the sisters see *Balamīkṣita* p 209 II 25 27. See *Vinaya* vs *Lakṣmīnābha* 2 Bom H O R (O O J) 117 at p 123 where the controversy as to the 'sisters' being included in the term 'brothers' is referred to and discussed. See also *Anjan Rao vs Ram Chander* 24 All 128 at p 130. *Chandika Dulah vs Mana Anar* 24 All 279. *Kera vs Ganga* 32 All 641. *Rudhan Singh vs Lalit Singh* 35 All 662. *Moolji vs Cursondas* 24 Bom 603, and *Bhagwan vs Warud* 32 Bom 500.

(2) As to what has been argued by Dhāreśwara<sup>1</sup>, that 'under the following text of Manu:' "Of a son dying

Dhāreśwara's  
argument

"childless, the mother shall take the estate; and, if the mother also be dead, the father's mother shall

5 "take the heritage", even while the father is living, if the mother be 'dead, the father's mother i. e. the paternal grand-mother, shall take 'the succession, and not the father: because wealth taken by the 'father may go even to sons dissimilar in class, but what is inherited 'by the paternal grand-mother, goes' to such only as appertain to the  
10 'same tribe: and that therefore the paternal grand-mother takes the estate.' (3) This even the Holy teacher<sup>2</sup> does not assent to; because the

Not approved of  
by Viśvarūpachārya

heritable right of sons even dissimilar in class has been expressly ordained by a passage above cited:<sup>3</sup>

15 "The sons of a Brāhmana (in the several tribes) "have four shares, or three, or two, or one etc."

(4) As to the text of Manu: "The property of a Brāhmana must "never be taken by the King; this is the settled rule", that intends the sovereign, and not a son<sup>4</sup> (i. e. of the late owner by a woman of the Kṣatriya family)

1 Viṣṇūśvara here takes notice of an opinion propounded by certain writers which is contrary to what has been stated above, about the succession of parents. Dhāreśwara is one of these, and the author refutes this opinion and reverts to the subject by a retrospect analogous to the rule known as "the lion's look" (शेरदृष्टि).

2 Ch IX. 217.

3 "Because if the wealth be regarded as taken by the grand-mother, it "would become a maternal estate and would go to sons of the same tribe, while a "father's estate would devolve on all the sons." Subodhini & Bālabhāṭṭi: 'This is a clear index of the meaning and extent of Stridhana according to Viṣṇūśvara. It will be seen, however, that this distinction has no longer any force under the case law, as the grandmother succeeding to a grandson only takes a widow's 'estate', and on her death succession would be by reference to the last male holder. See *Gandhi's Maganlal vs Bai Jado* 2 Bom L R 574 at p 583-24 Bom 574, *Mars vs Chennammal* 8 Mad at p 119-120

4 i. e. Viśvarūpachārya, see Subodhini and Bālabhāṭṭi

5 i. e. Verse 125 at p 1033

6 Ch IX 189.

7 Here, the author intends to avoid a confusion which might arise on account of the term *Kṣatriya* indicating generally the ruling class. The author explains that the text intends the prohibition of an escheat to the sovereign, the ruling authority—and does not prohibit a son of a Brāhmana from a Kṣatriya wife from taking



(5) Among brothers also the uterine<sup>1</sup> brothers take the inheritance in the first instance under the text<sup>2</sup>: "To him, who is the nearest "*sapinda*, the inheritance shall belong", since the non-uterine brothers are remote through the difference of the mothers

(6) If there be no uterine brothers, those by different<sup>3</sup> mothers 5  
inherit the estate

(7) On failure of brothers also, their sons<sup>4</sup> share the heritage in the order of their respective fathers

1 Colebrooke translates half blood and whole blood for मिश्र and पितृ. Colebrooke adds in bracket (or whole), the expression in the Mitākṣharā is *Sodara* : 1 persons (born) of the same uterus, and the question would be of importance in the case of those among whom re-marriage of women is allowed by law. For in such a case, there might exist brothers who are 'uterine,' but not 'of the whole blood'

2 of Manu Ch IX 187

See *Subramanya vs Seta Subramanya* 17 Mad. at p 320 *Vithala vs Ramas* 2 Bom L R 154-157-24 Bom 317 and *Bhagwan vs Waras* 10 Bom. L R 389-32 Bom 300 where this passage has been referred to

3 According to the *Mayūkhya*, the brother's son comes in after the brother. He does not agree with the opinion of the Mitākṣharā as here expressed (see Mandlik p 80 ll 29 36), see *Haridas vs Ranchhodas* 5 Bom L R 510. But this rule does not go beyond brother's children. *Chandila Bala vs Muna Kuar* 24 All 273 (T O) The stricter rule of the Mitākṣharā was applied in *Keer vs Kalla Prasad* 32 All 541 (T B) where an uncle of the half blood was given preference to the son of an uncle of the whole blood

4 This expression has received considerable judicial notice especially in Madras and Allahabad, the opinions expressed in the two courts differing from one another

According to the view expressed in Madras, the expression *his son's son* does not include 'grandson'. See *Surya vs Lakshmanarasamma* 5 Mad 291 *Chinnasami Pillai vs Ranga Pillai* 35 Mad 152, and this view seems to be in agreement with *Subodhini* (see p 74 ll 23 26, see also Mr Mandlik's note p 300). A contrary opinion has been expressed in Allahabad see *Kishan Ram vs Ramchandra* 24 All 126 *Budha Singh vs Lalla Singh* 34 All 663 at pp 667 and 675. See also *Kanhaiya vs Morchara* 35 Bom 389-13 Bom L R 5a2. In the judgment of this case the word 'line' has been interpreted to extend to 6 degrees, and reference is made to *Bhaya Ram Singh vs Bhaya Ugar Singh* 14 M I A 373 at p 394 following what is known as the Harrington theory. As to the theory thus propounded by Mr Harrington, see Mandlik pages 380 383, its practical working out is not free from difficulty, (see West and Buhler's *Hindu Law* 3rd Edition p 124 seq) The remark

(Contd. on next page)

(8) In case of competition between brothers and brothers' sons, the brothers' sons have no title to the succession for the right of inheritance of brothers' sons is declared to be on failure of brothers

(9) When, however, a brother has died leaving no male issue, and the estate has devolved on his brothers generally, if any one of (such) brothers die even (yet) before a distribution of their brother's estate takes place, his sons do, in that case acquire a title through their father, and it is fit therefore, that a share should be allotted to them in their father's right, at a distribution of property between them and the surviving brothers

[Colebrooke Sec. V]

[Succession of kindred of the same family name (agnates) termed Gotrajas or Gentiles]

(1) If there be not even the brothers' sons the *Gotrajas* take

(Contd. from last page)

in 30 Bom. at p 392 extending the line to six degrees was not called for by the facts of that case and it cannot be said that the rule in Bombay has been settled. As an illustration of the consequences of this dictum see *Ahmadacharya vs Gonsaidacharya* 13 Bom. L. R. 1000. Also see Telang J in *Pacharav vs Kalingappa* 16 Bom. 710 at p 719. And this claim is determined by reference to the paternal ancestor by distinction based on the ground of blood having no place beyond cases expressly specified. See *Vallab vs Ramrao* 24 Bom. 307. *Assi vs Ganga Sahas* 32 All. 541 (F. R.)

As between a nephew and a grand nephew no right of representation exists and the former excludes the latter *Sher Singh vs Basant Singh* 50 All. 904

1 See *Devi Parshad vs Thakur Dal* 1 All. 100 at p 112 and *Jasoda Har vs Sheo Prasad* 17 Cal. 33 at p 37

2 See the rule of Yājñavalkya II. 120 (2) on p 1017 II. 23-24

3 *Gotrajas*—this word is made up of the two parts *Gotra*=gene or family, and *Jas*=born. Persons born in or belonging to the family. Colebrooke has translated it as 'gentiles', while in 2 M. I. A. at p 101 it has been rendered as 'More distant paternal Kinemen'. It should be remembered that the word has a special technical meaning attached to it and as a rule generally the case with such terms they are better understood in their original form than by any equivalent of it in the same or other language.

The term *Sagotra* may also be remembered along with this term. Generally both signify the same thing but strictly and literally there would be a slight difference between the two. For, the first means and indicates those who are born in the

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the estate The *Gotraṃ* are the paternal grand mother, the *Sapindas*<sup>1</sup> and the *Samānodakas* } (2) Among these, the paternal grand mother takes the estate first } Because, (although) the paternal grand mother's succession immediately after the mother was seemingly suggested by the text <sup>2</sup> "And if the mother also be dead the father's 'mother shall take the heritage' no place, however, is found for her in the compact series of heirs from the father and others to the nephew, and the text 'The father's mother shall take the heritage' is intended simply to indicate her (general) competency for in

(Contd from last page)

(same) family while a *sagotra* is one belonging to the same family And this difference becomes important in the case of the female *Sapindas* some of whom are of the same family : e (sagotra) though they may not be born in the same family, e g a mother a wife a daughter in law, while others are *Sapindas* born in the family (*gotra*) though they may not continue to be of the same family (*sagotra*) e g daughter, a sister See *La'fukha* vs *Cumha* 5 Bom 110 (p c) at pp 122 123-71 A 212 p 234 235 where the terms *Sapindas* &c are retained in their original form *Gotra* is not exactly on a par with the Roman *Gen* though the general principles underlying the two are the same In the case of the terms *Sagotra* and *Gotraṃ* their literal meaning and technical significance should be particularly borne in mind Thus e g the father's mother who has been pointed out by *Vyāñakeśvara* as the first in the line of the *Gotraṃ* is a *gotraṃ* under the technical acceptance of that term : e *Sagotra* but if its literal meaning (*gotra*+*ja*) one born in the family) be taken, she is not So per contra a daughter or sister though by reason of their birth are *gotraṃ*s (born in the family) under the literal significance of that term still according to its technical acceptance are not *gotraṃ*s because by reason of their marriage they are not *sagotra*s—of the same family

1 *Sapindas* and *Samānodakas* These two terms have been explained further on in the text of *Mitākshara* quoting from *Bṛhaspati* (p 1100 ll 8-13) The *Sapindas* referred to here are *gotraṃ* or *sagotra* *sapindas* and not any *Sapindas* covered by the definition of that term as given by *Vyāñakeśvara* See note 1 on p 1071 (*supra*) 2 Of *Mān* Ch IX 217 (see p 1094 ll 4 & 5 *supra*)

3 Compact series of heirs : e The expression in the *Mitākshara* is *Baddhādharma* (Those) whose order (of succession) has been fixed (as in a phalanx) The meaning is this—The mother takes as an heir named in the expression *Pitaram* parents : e mother and father and so immediately after her comes the father by virtue of the compound expression Through the breach made by the father the whole 'serried phalanx' of heirs ending with the *Tatvā* comes in leaving no room for the grandmother to enter and thus it is that she necessarily has to wait till a gap is left for her to enter See *Mān* vs *Kṛishnak* 6 Bom 597 at pp 602 & 603

heritance She takes immediately after his son<sup>1</sup> in the line<sup>2</sup> of succession; and thus there is no contradiction.

1 *Tatanta*—i.e. the son of the brother See note 3 on p 1095

2 'The line'—The original word is *santhāna*—which literally means something which is going on continuously (*san + āna*) How far this 'line' extends has been the subject of much discussion, and recently, this question has attracted considerable attention in Courts in India, especially in Allahabad and Madras, and in one case the Bombay High Court appears to have expressed a view in line with the Allahabad view, the Court in that case extending the 'line' to seven degrees

According to the *Sūfodhāna* the 'line' would appear not to extend beyond the 'tatanta,' the expression used by the *Mitākṣharā*, and Mr Mandlik in an elaborate note has maintained this view, which would appear to be the proper view See note above on p 1095 See also the following cases *Raja vs Gossind* 1 Bom 105, *Vithaldas vs Ramrao* 24 Bom 317=2 Bom L R 167 *Budhaningh vs Laltungh* 34 All 663 at pp 667-676 *Chinnasami Pillai vs Kunya Pillai* 35 Mad 102 at p 155 *Kanhai vs Marichwar* 35 Bom 380=13 Bom L R 555 *Jalludhas vs Casis* 36 Bom 121 *Surayya vs Lalshamwarayya* 6 Mad 205

*Shidramayya vs Nachawade* 67 Bom 377

In the appellate decision of *Budhaning vs Laltu Singh* 42 I A 208 the Privy Council have held that the word *Putra* as used here must be understood in a generic sense, as in the case of the lineal descendants of the deceased, and thus held that the grandson of an uncle had priority over the son of a grandniece In a later case *Sobramiah vs Nataraja* 53 Mad 61 the Madras High Court, adopting the ruling in *Budhaning* case limited the extension of the line of the *gotrayas* to three degrees only In the recent case of *Appayya vs Mohanlal* 32 Bom L R 709 (F B) the same point came indirectly for a decision, but no direct ruling has been given The point which still requires a clear decision is upto what degree should the word 'line', *sāṅha*, be taken to extend? See *Lala Harshar Pratap Bahadur Singh vs Raju Bujrang* 9 Luck 211

*Uttara tatantānantaram*—in the line of a succession immediately after the *tatanta* There are variations in the reading of the passage in the *Mitākṣharā*, these are noticed by Balambhatta (See p 211 ll 20-22)

The compact series of heirs ends with the brother's son and does not include brother's grandson Therefore a daughter-in law has preference over the brother's grandson *Appayya vs Mohanlal* 32 Bom L R 709 (F B), 54 Bom 564

*Act II of 1929*—According to this Act, the son's daughter, daughter's daughter, sister, and sister's son, are declared as heirs immediately after the father's father and before the father's brother

The Lucknow High Court in interpreting this Act has held that the *Mitākṣharā* has been superseded by this Act, as regards sisters both where they were regarded as heirs before, as also where they were not so regarded *Bhagwan Das vs Ladda* 8 Luck 610 It has been held that the Act applied to estates of those who died before the Act came into force if the estate vested in a female who was alive when the Act came into force i.e. 21st February 1929, and the question of inheritance by reversion opened after that date, *Shimpati Shaktimata Devi vs Khushalya Devi* 17 Lah 354, 356

(3) In the absence of the paternal grand-mother, however, the *sapindas* born<sup>1</sup> in the same *gotra* (with the deceased), such as the paternal grand-father and others, inherit the estate; for *sapindas* of a different *gotra* are indicated by the term *Bandhus* (4) Among these, moreover, on failure of the father's line<sup>2</sup>, the paternal grand mother, 5 the paternal grand father, the paternal uncles and their sons, are successively heirs to the estate

1 See note above and *Lallubhai vs Cambar* 5 Bom at p 122-7 I A 236  
*Saguna vs Sadashu* 26 Bom 710 at p 713 *Umasi Bahadur vs Udichand* 6 Cal 119 (F B) at p 120 *Kelhanra vs Ramchandar* 24 All 128 at p 131 See observations in 13 M A I A at p 378

2 Colebrooke translates, "In the absence of the paternal grand mother, the *gotrajas*, 'kinsmen born in the same family with the deceased' and *sapindas* connected by funeral oblations, namely the paternal grand mother &c". Balambhatta insists that the grand father takes before the grand mother (See p 211 II 23 33) But the *Mayākha* does not support him here as in the case of the parents Balambhatta's reasoning, however, is not convincing

"The commentator takes occasion to censure an interpretation which corresponds with that of the *Mitākṣharā* as delivered in the following section (8 6 § 1), and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth because it would follow, that the father's sister's son, and the rest would inherit, although the man's own sister and sister's sons were living. Balambhatta, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons which is indeed Nanda Pandita's own doctrine

"He adds, 'after the heirs above mentioned the *sākalyas* or distant kinsmen are entitled to the succession meaning 'a relation in the fifth or other remote degree'

"This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitākṣharā*. On the other hand, the author of the *Viśvamāyā* has exactly followed the *Mitākṣharā*, and so has *Ramachandra*, and it is also confirmed by *Viśvānāthāchārya* in the *Vyavahāra Mūrti*, as well as by the *Smṛti-chandrikā*

"But the author of the *Vyavahāra Mayākha* contends for a different series of heirs after the brother's son '1st, the paternal grand mother, 2nd the sister, 3rd the paternal grand father and the brother of the half blood, as equally near of kin, 4th the paternal great grand father, the paternal uncle, and the son of a brother of the half blood sharing together as in the same degree of affinity'. He

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(5) On failure of the paternal grand father's line, the paternal great-grand mother, the paternal great grandfather, his sons and their sons (inherit). In this manner must be understood the succession of *sapindas*<sup>1</sup> of the same *gotra*, as far as the seventh (ascendant)

- 5 (6) If there be none such, the succession devolves upon the *samānodakas*, and these must be understood to be seven (in degrees) beyond the *sapindas*: or else, as far as the limits of knowledge as to birth and name extend. As says Bṛhan-Ānu<sup>2</sup> "The relation of the  
10 "*sapindas* ceases with the seventh person, and that of the *samānodakas* "*ceases (after extending) as far as the fourteenth (degree), or as*  
"*some affirm, (it reaches) as far as the memory of birth and name*  
"*(extends); after that is indicated by (the term) gotra"*

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has not pursued the enumeration farther, and the principle stated by him—*nearness of kin does not clearly indicate the rule of continuation of this series*—"  
Colebrooke

Having regard to the importance of the point involved and having regard to the divergence of views expressed in India in quite recent times, the necessity of a definite decision on this point will soon arise, when the authorities referred to above will be of use

1 *Samānagotra-sapindas*—are those *sapindas* who belong to the same *gotra* as that of the deceased

2 To the same effect is Manu Oh V 60 It runs thus

सपिण्डा ह पुत्रे मते विनिराते । सपिण्डे क्त्वाचतु जपनामालेद्वे ॥

The Vyavahara-Māyukha refers to this passage, Tr "The *Sapinda* relation ship ceases with the seventh person [in the line] and that of *Samānodakas* (i.e. those connected by an obliteration of water) ends when births and names are no longer known." Mandlik p 82 II 10 13

Relying on this and other texts it has been held in *Bas Doolare vs Anantaram Jamnaram* 10 Bom 372 at p 379-380—that the word *Samānodaka* includes descendants from a common ancestor more remotely related than the thirteenth degree from the propostas

See also *Umaid Bahadur vs Udas Chand* 6 Cal 119 (F B) *Mari vs Chinnam* mal 8 Mad at p 128 *Ram Datta Lal vs Karala Prasad* 32 All 504 at pp 597-598 where it was held that a *Samānodaka* is a nearer heir than a *bandhu*, and *Bhyab Ram Singh vs Bhagat Ugar Singh* 13 M I A at p 380 *Kaigauda vs Somappa* 33 Bom 669 at p 683 See also *Jedamath Kuar vs Esheshwar* 50 I A 173 at pp 189 190

[ Colebrooke, Sect VI. ]

\* PAGE 97.

[ Of the succession of cognate kindred or *Bandhus* ]

(1) (On failure of the *Gotrajas*,<sup>1</sup> the *Bandhus* succeed to the estate ) *Bandhus* moreover, are of three kinds, the *Ātma-bandhus* ( or his own *bandhus* ), the *Pitṛ-bandhus* ( or his father's *bandhus* ), and the *Mātṛ-bandhus* ( or his mother's *bandhus* ); as has been declared<sup>2</sup> ( by the following text ) " The sons of his own father's sister, the sons of

5

1 *Gotrajas* and *Bandhus*.—See note above Both are *Sapindas*, but the former are *Sapindas* of the same *gotra* or *Sagotra-Sapindas*, while the latter are *sapindas* of a different *gotra* or *dharmagotra sapindas*. Mr Colebrooke translates these terms as, " gentiles and cognates " See *Muthusami vs Samambadu* *Muthulakshmi vs Muthusami* 23 I A 80-89=19 Mad 405

N B In Bombay Widows of *gotraja sapindas* succeed after the males in each line These take *her capita* and not *her stirpes* *Kallava vs Vithabai* 32 Bom L R 906

2 Bilambhatta assigns this text to *Vṛddha Sātrāpa* ( see p 2141 28 ), but it is ascribed to *Baudhāyana* in *Vyākhyāna-Mādhava* ( see p 354 Bibliotheca India Series )

*Bandhus*.—The enumeration of *bandhus* given here is not exhaustive but only illustrative *Girdhara Lal vs The Bengal Government* 12 M I A 448, *Mohandas vs Krishnabai* 5 Bom 497 at p 601 *Lakshmanmal vs Tirunengodu* 5 Mad 241 at p 245 A contrary view was expressed in *Narayanma vs Maryammal* 13 Mad 10 at p 13, but having regard to the decision of the Privy Council in 23 All 83 and 19 Mad 405 cited above, the reasoning of the decision in 13 Mad 10 would seem not to apply now, even to Madras, nor does it " determine the order of succession as between several lines within each of the series of *bandhus* " per Jenkins O J in *Seyuna vs Sadashiva* 4 Bom L R 527 at p 530=26 Bom 710

In *Gajadhar vs Gauri Shankar* 54 All 698 ( F B ), however, the Allahabad High Court has held otherwise According to it the classes cannot be added to ( p 704 ) In order to succeed as a *Bandhu* it must be proved that a mutuality of relationship as *Bandhus* was established ( 705 ) Therefore a father's sister's son's daughter's son was held not to be a heritable *Bandhu* ( *Ibid* ) See also pages 701-718 and 719-735

The *sapinda* relationship of a *bandhu* ceases after five degrees from the common ancestor *Ramchandra Marland Vankar vs Vinayak* 42 Cal 384

The son of a half sister of the father has preference over the son of a sister of the mother, because the former confers greater spiritual benefit than the latter, *Jotindra Nath Roy vs Nagendra* 33 Bom L R 1411 ( P O )

The step-son of the step sister of a male is not an heir *Sambantha vs Angammal* 45 Mad 257

Father's brother's grandson succeeds before the brother's great-grandson *Venkateswara Rao vs Adinarayana* 58 Mad 323



- " his own mother's sister, and the sons of his own maternal uncle,  
 " should be considered as the *Ātma bandhus* (or his own bandhus)  
 " The sons of his father's paternal aunt, the sons of his father's  
 " mother's sister, and the sons of his father's maternal uncle, should  
 5 " be known as his *Pitr bandhus* (or his father's bandhus) The sons  
 " of his mother's father's sister, the sons of his mother's mother's sister,  
 " and the sons of his mother's maternal uncle should be known as his  
 " *Mātṛ bandhus* (or his mother's bandhus' ) "

- (2) Here also, by reason of near affinity, first the *Ātma bandhus*  
 10 succeed to the estate, on failure of them, the *Pitr bandhus*, and on  
 their failure the *Mātṛ bandhus* (succeed) This must be understood  
 to be the order (of succession here intended)

[ Colebrooke Sect VII ]

[<sup>2</sup>Of the succession of strangers upon failure of the kindred]

- 15 (1) On failure of the *bandhus*, the preceptor<sup>3</sup>, and on failure of  
 him, the pupil (succeeds) according to the text of *Āpastamba*<sup>4</sup> " On  
 ' failure of the sons the nearest *sapinda* (inherits), on failure of  
 ' them, the preceptor, on failure of the preceptor, the pupil (shall  
 ' take the wealth) " (2) (If there be no pupil, the fellow-student is

1 The three kinds of *bandhus* mentioned here are not mentioned in *Aparāṅka*  
 ( see p 745 *Ānandaśraṅga* No 45 ), see however *Mayukha* ( *Mandik*, Bk p 50  
 Eng Tr p 82 l 28 &c )

2 *N B* Now follow the principles of succession of strangers It may be  
 noted that this line cannot be resorted to unless and until all the sagotra and other  
 relations are exhausted See *Lakṣmīsmṛti* vs *Tīrtasaṅgata* 5 *Mā* 241 at p  
 245 See also *Umed Bahadur vs Uda Chand* 6 Cal 119 16 Bom

3 *Āchārya* is the word in the text for the English word preceptor There  
 are other terms indicative of the same such as *Guru* *Upādhyāya*, *Rishi* &c, but  
 there are minute distinctions in their import See *Yājñavalkya* I 34 35 Tr  
 pp 126 127 *Manu* Ch II 140 141, where all these terms are explained and the  
 importance of each is indicated See also *Amarakosa* II 7-(6-7)

4 *Dharmasūtras* II-6-14-(2-3)



the successor } He, who received his investiture, lessons<sup>1</sup> (in the scriptures) with their meaning, and thus acquired knowledge proceeding therefrom from the same preceptor, is a fellow-student

(3) If there be no fellow student, some learned<sup>2</sup> and venerable priest should take the property of a *Brāhmana* according to the text of Gaudama<sup>3</sup> } *S'rotiyyas* or venerable priests should share the wealth "of a *Brāhmana* who leaves no male issue" (4) For want of such a successor, any *Brāhmana* (may be the heir), As says Manu<sup>4</sup> . " But 'on failure of all (the heirs) *Brahmanas* (shall) share the estate, such "( *Brāhmanas* ) as are versed in the three Vedas, (and are ) pure and "self controlled, thus the law is not violated" 5 10

(5) (Never shall a king take the wealth of a *Brāhmana*, vide the text of Manu<sup>5</sup> ' The property of a *Brāhmana* shall never be taken "by a king, this is settled law ' It has also been said by Nārada ' If for the wealth of a *Brāhmana*, on his demise, there be no heir, it "must be given to a *Brāhmana*, (acting) otherwise<sup>6</sup>, the king becomes "taunted with sin" 15

(6) The wealth of a *Kṣatriya* and others, (however) in the absence of heirs down to the fellow student, the king may take, and not a *Brāhmana* } As says Manu<sup>7</sup> " But, (the property) of other "classes on failure of all (heirs), the king may take" 20

1 The expression in the text is *Adhyayana*—study The study of the Vedas is the most important part of a Man's education, and an *Adhyayana* necessarily includes their study In fact *adhyayana* means *per excellence* the study of the Vedas

2 *S'rotiyya*—a learned Brahmana and not a mere *Brāhmana* Note the following

अभ्यासाद्वाङ्मनो ह्येव सस्मरतिद्विज उच्यते । विद्वान्वासी भवेद्विज भवेद्विजमिति वि ॥

The derivation of the word is explained by reference to two rules of Grammar by Pāṇini 5-2-84 and 4-2-59 the result of which is that the term is applicable to such a *Brāhmana* as has mastered the whole *Vedas* *loka*

3 Ch XXVIII 39

4 Ch IX 188

5 Ch IX 189

6 Otherwise—i. e. if he takes it himself (see *Baṭambhatī* p 216 l 7)

7 Ch IX 189

## Vīramitrodaya

Now, in the absence of the twelve sorts of sons, the Author discusses those who would take the property

Yājñavalkya, Verses 135-136

- 5 *Aputrasya* १, 'Of one without issue,' i.e. without any of the twelve sorts of sons, and without a grandson or a great grandson, *śauryaśāstra*, 'one departed for heaven' i.e. who has died, of the wife and those others stated, in the absence of the one prior 'each one next in order' *uttarottarah*, becomes *dhenabhīḥ*, 'entitled to the property' Thus this
- 10 *vidhī*, 'rule,' regarding the succession to the property of one dying without issue is equal in all classes, *sarvaśāstreṣu*

- There first the wife is entitled to the property, such a one, however, is to be understood to be one who has been consecrated by the sacrament of marriage, vide the rule<sup>1</sup> "the substitute ३ replaces the
- 15 "final ३ of स्त्री before the feminine affix ३ when the word so formed 'indicates 'a wife who takes a part in the sacrifices of her husband.' Here *kātyāyana* states a special rule "A wife takes the property of her husband who is not unfaithful failing her, however, the daughter, "if she be unmarried then. If the wife, however, be unfaithful,
- 20 *Narada*<sup>2</sup> states a rule "In the absence of the son, however, the daughter, 'as she has been declared to be equal to a son' "When the wife "does not exist the unmarried daughter of the same class as that of the "father, succeed to the property', vide the forestated text of *kātyāyana*

- Some say that this has a reference to the appointed daughter
- 25 That is not proper, since even when the wife is living she is entitled to the property, since under the text of *Vasishtha*<sup>3</sup> viz. "The third is the "putrī<sup>4</sup> herself, has been regarded as a son. Also this text of *Bṛhaspati*<sup>5</sup> "From his several limbs is produced, like the son, the "daughter of a man, when she herself is living how can any other take
- 30 "the property? (56) Equal in caste (to her father) and married to a man "of the same caste as her own, virtuous and devoted to service, whether "she be appointed or not appointed as a son, she has been considered "as entitled to take her father's property (57) Here, moreover, the marriedness is qualitative of the appointed only and not also of the not
- 35 appointed even, vide the text of *Kātyāyana*, so hold the Southerners. As a matter of fact, however, the meaning of the word daughter here viz. 'not impotent, not appointed, mentally regarded as a daughter' is without including her among the sons in an equivocal manner

1 Of Grammar, IV I 33

2 Ch XIII 50

3 Dr. Jolly reads सुवचनमप्युवाच

4 Ch XVII 15

5 Ch XXV 56, 57

From the original text, "women are not entitled to an inheritance "is they are without vigour", and by the contraction and limitation of the text of Manu<sup>1</sup> "Of a sonless man the father shall take the property, "or the brothers even, this way would be in pursuance of the usage of the Mathīlas

*Pitarau*, 'the parents', i.e. the mother and the father. These by reason of the two texts, viz. "*Wenā* etc. and also by reason of the order in the text of *Kātyāyana*, viz. "Of him (dying) without issue, the wife of a good "family, or the daughters also, in their absence, the father, the mother "and also the sons, have been declared (to be heirs), although, (the property goes) to the father, and in his absence the mother takes the wealth, it is clear that this is so under the text of *Vishnu*<sup>2</sup> viz. "Of a "sonless man, the property goes to the wife, failing her to the daughter, "in her absence to the father, and in his absence to the mother

Thus therefore the statement of *Mitākṣarā*<sup>3</sup> "That because in the "solution clause of the compound the word mother happens to be placed "first, and also because as compared with the father she does not happen "to be the parent of a child born of another mother and thus having a "common propinquity is doubtful<sup>4</sup>

Failing the mother, the uterine brothers, in their absence the brother's son, and in his absence the *gotra* *sapindas*, *sahūyas*, and the rest according to the nearness of their relationship. In the absence of these the *Bandhus* technically described as "The sons of one's "father's sister, the sons of one's mother's sister, and the sons of one's "maternal uncle are to be known as 'one's own *Bandhus*, *Ātmabandhus* Failing these *Sishyah* 'the pupil, in his absence the *Sabrahmacari* 'co-student, i.e. one who received his initiation and the study of the *vedas* from the same preceptor.

Here, by the use of the word *cha*, 'also', is included the right of a step brother in the absence of the uterine brother, by the use of the word *tathā*, 'similarly', in the absence of the *Ātmabandhus*, those of the *Pitrbandhus*, and in their absence, of the *Matrbandhus* as technically defined, and in their absence also that of the Preceptor's right to succeed. By reason of the nearness of relationship also under the text of *Āpastamba*<sup>5</sup> In the absence of the preceptor the resident "student is the statement in short *Nārada*<sup>6</sup> "Even on failure of all the "heirs, the *Brāhmanas* shall share the estate, such as are versed in the "three Vedas (and are) pure and self controlled, thus the law is not "violated. The property of a *Brāhmana* shall never be taken by a King, "this is the settled law, but of other classes on failure of all, the King "may take (135-136)

1 Tait S VI 5 8

2 Ch IX 185

3 Ch XVII 46

4 See p 1092, l 7 above

5 Tait p 95 l 16

6 Dh S II 5 143

7 See Manu Ch IX 186, 189

## S Śūlapāṇi

Now the Author mentions the distribution of the property of one without a son

Yājñavalkya, Verse 135-136

- 5 *Apurūṣa*, 'Of one without an issue,' dying, among 'the wife' and the rest, in the absence of the one preceding, the one succeeding becomes (the heir) So *Viṣṇu*<sup>1</sup> "The wealth of one without a male "issue goes to his wife, in her absence to the daughter, in her "absence to the mother, in her absence to the father, in his absence  
10 "to the brother" and so on This moreover is applicable to those who are equal So *Brhaspati*<sup>2</sup> "Although the *Sakulyas*, the father, "the mother, and the uterine brothers exist of one who has died without "issue, the wife is entitled to take the estate " This right of the wife even when the brothers exist, has reference however, to the wife endowed with eminent good qualities And the quality consists in the (performance of the) *vriddha*, maintaining (unsullied) the bed and such other vows So (says) *Vṛddha Menu* "The widow of a childless man, keeping 'unsullied her husband's bed, and persevering in religious observances, "shall herself present his funeral oblation and obtain the entirety of his  
15 "estate " In this manner also "Of one who has died without issue the "property goes to the brothers, in their absence the parents shall take, or "the senior wife," this text of *Paṭibhāṣā*, has reference to a wife who is devoid of qualities and who is guilty of adultery The text of *Śaṅkha*<sup>3</sup> is "They should make provision for the maintenance of his wives till  
20 "his death, provided they preserve unsullied the bed of their lord They "may, however, cut off in the case of those who behave otherwise, 'should also be taken as applicable (in this manner also) to this subject

- "In the absence of the sons, however, the daughter as she is equally  
"regarded as in the line the son, as well as the daughter, both are effective  
30 "in perpetuating the lineage," this text of *Nārada*<sup>4</sup> has a reference to the *Putrāpūtra* So *Brhaspati*<sup>5</sup> 'Equal in caste (to her father) and married to "an equal, virtuous and submissive Whether (she was) appointed or "not appointed as a son, the daughter shall take the father's property "

1 Ch XVII 4-8 *Viṣṇuśāstra* cites this as the text of *Bṛhadarīṣṇu* see p 1007, II 8 11 (above) 2 Ch XXV 46

3 In the *Viśākṣarā* this text has been cited as of *Nārada* see above p 1008, II 9 16 and *Nārada* XIII 26

4 See *Nārada* XIII V 60 where the reading is *पुत्रपुत्रपुत्रपुत्र* It should be noted, however, that this text occurs in the *Smṛti* of *Nārada* in the chapter in which in an earlier stage (Verse 2) the order of heirs given is, sons, mother, daughters in their absence, their sons *Śūlapāṇi* takes it as having a reference to the *Putrāpūtra*

5 Ch XXV 67

The meaning is, whether she was intended to be made an appointed daughter or not

"The parents, and brothers likewise"—(in this) the right of the parents when the brothers exist, is in regard to the property acquired by the father, grandfather &c. For what was acquired without detriment to such ancestral estate, even when the parents exist, such property belongs to the brothers. As says Devala "Thereafter, the property of a sonless man, the uterine brothers shall divide, or even the daughters equal (in caste), or if he be living, the father also" Among these &c. the wife and the rest, in the absence of the one prior to the one next in order. Gone to heaven viz dead (135-136).

[Colebrooke Sect. VIII]

[On' succession to the Property of a Hermit or an ascetic]

(1) It has been declared that sons and grandsons<sup>2</sup> also take the *ditya*, and that on failure of them, the widow and others (succeed)

1 This is an exceptional rule stated specially to be applicable in the case of hermits &c, see *Gajraj Pers vs Achander Pers* 16 All at p 195 Mayne on Hindu Law § 506 West and Buhler's Hindu Law p 532 In *The Collector of Dacca vs Jagat Chander Gonnams* 23 Cal 608, an application was made for letters of administration to the estate of a deceased disciple. It was opposed by the Collector of Dacca on behalf of Government. But the report does not give the grounds of the opposition, nor does it give any details. The High Court (Maclean O J and Banerjee J) confirmed the order granting the 'Letters' as prayed for. On this passage Mr J O Ghose observes at p 788 (2nd Ed) 'With all respect to the learned judges, it should be observed that according to Hindu Law, the ordinary rules of succession should apply to that strange individual the married ascetic. Indeed, according to ancient law ascetics who have resumed worldly ways, are slaves of the King and their property in strictness belongs to him' (citing *Nārada*). The report does not give good ground for these observations, nor, it is submitted, are the observations justifiable on the general customary law prevailing among the hermit sects such as the *boutrags gowris* &c. See also *Chakrapur vs Duan* 29 All 189 at p 188

2 Mr Colebrooke adds after grandsons in bracket, ('or great grandsons') relying upon Bālabhatta who suggests the inclusion of great grandsons on the strength of the conjunction *Chā* also. Upon this translation it has been observed at p 378 of 13 M I A *Bhagat Pam Singh vs Bhagat Ujar Singh*. 'This incorporation of the words 'or great grandsons' in the text of the Mitāksharā, shows that the translator (whose authority is of the highest order) considered that the inclusion of the great grandson, among immediate heirs was the approved doctrine of the later class of the expositors of the law of Benares.'

The Author now propounds an exception to both these .

### Yājñavalkya, Verse 137

Of a hermit of an ascetic, and of a life long celibatist, the heirs to the property are in their order, the preceptor, the virtuous pupil the spiritual brother and associate in holiness.

(2) Mitākṣarā — Wānaprasthaya of a hermit, yateb, of an ascetic,<sup>2</sup> and brahmacharinascha and of a life-long celibatist, kramena, in their order, i.e. in the inverse<sup>3</sup> order, āchāryah<sup>4</sup>, the preceptor, sachchishyah<sup>5</sup> a virtuous pupil, dharmabhrātrakatutthi cha and a spiritual brother and associate in holiness also are successors rikthasya to the property, i.e. of the wealth

(3) The Life long celibatist must be a professed<sup>6</sup> or perpetual one, of a temporary student however, the mother and the other heirs alone take. And the preceptor is declared to be the heir to a professed student as an exception<sup>6</sup>. (4) A virtuous pupil, however, takes the property of a yati or ascetic. Sachchishyah, a virtuous pupil,

1 The condition of being virtuous is a general requisite for a pupil. The preceptor and the spiritual brother become successors only if they are virtuous, and so the qualifying clause has been placed in the middle (see Subodhini p 74) and so Vyāsa observes further on that even a preceptor, if ill-conducted does not become entitled to a share.

2 The terms 'hermit' and 'ascetic' are severally used for the two words 'Vansprastha' and 'Sannyasi' which indicate two distinct orders.

3 See Balambhatti p 244

4 For the full significance of this term गुरु and its distinction from the other terms of similar import see Yajñ I 31 and 32 and Manu Ch II 149-150 (see note 3 on p 1102 above)

5 i.e. Anashishā as distinguished from the Upasādhā

It is derived as विद्या मयं नमस्कृतं मन्त्रवचनं विदति (विद्या-टिप्)

A perpetual religious student who continues with his spiritual preceptor even after the prescribed period, and vows life-long abstinence and charity. See Yājñavalkya I 4<sup>a</sup> pp 140-141 above in Part I

An Upasādhā—i.e. only a temporary student. He is in a state of pupilage for a limited time, wishing to pass on into the state of a householder (grhastha).

6 i.e. to the claim of inheritance of the mother and other heirs (see Subodhini p 74 I 32 Balambhatti p 244 24)

again, is one who is assiduous in receiving<sup>1</sup> lessons in theology<sup>2</sup>, in retaining the same, and in practising its ordinances. For, a person whose conduct is bad is unworthy of the inheritance, were he even the preceptor or any like other. (5) A spiritual brother and associate in holiness takes the property of a *vānaprastha*, *hermit*. Dharmabhātā, a *spiritual brother*, is one who is engaged<sup>3</sup> as a brotherly companion. Ekaūrthi, an associate in holiness, is one appertaining to the same hermitage. One who is 'a spiritual brother' and also 'appertains to the same hermitage' is "a spiritual brother and associate in holiness"

(6) In<sup>4</sup> the absence of these viz., the preceptor and the rest, an associate in holiness alone takes even though sons and other (natural) heirs exist.

(7) Indeed by the text of Vasishṭa<sup>5</sup> viz.: "But those who have entered into another order receive no share," there is not even the right of inheritance of those who have entered into another order; how can there be a partition of their property? Nor has a professed<sup>6</sup> student a right to his own acquired wealth: for the acceptance of donations and other means of acquisition are forbidden to him. And since Gautama<sup>7</sup> ordains that "A mendicant shall have no house," there is no possibility of the self-acquired wealth in the case of a mendicant also.

1 Mr Colebrooke translates "who is assiduous in the study of theology &c." The original specifies three distinct stages of the 'study' viz. of (1) *Śāstra* listening to the lectures or receiving the lessons, (2) *dhāraṇā*—retaining them and (3) *Tadārthānuśāśāna*—practising its ordinances intelligently

2 The original is *अध्ययनम्* *Adhyāna* : i. that which addresses itself to the soul: *Philosophy*. That portion of religious study which refers to the study of Philosophy

3 i. e. who has taken a vow or undertaking, and who has been accepted as a brother (see Subodhini p 75 l 6 Bālamhātta p 245 l 2)

4 To the enquiry as to who should be the heir to the property of a *Brahmachārī*, *Faṭi* and *Vānaprastha* in the absence of the heirs named above, the Author has mentioned the *Ekaūrthi*, "an associate in holiness" (See Subodhini p 95 l 7.)

5 Ch XVII 62

6 *अभिमता* : i. he cannot claim anything as his self acquisition. This expression in the *Mitākāṣṭhā* (p 97 l 29) is *स्वर्जितवस्तु* *Swargita dhanavastu* & *Adh*

7 Ch III 11

(8) The answer is \* As for the *Vānaprastha*, a hermit may have property, under the text<sup>1</sup> "He (a hermit i.e.

The Answer

"*Vānaprastha*) may make a hoard of property suffi-

cient for a day, a month, six months or a year, and in the month of

5 "Āṣvīn he should abandon what has been collected," he certainly may

\*PAGE 98

have property. The *yati* or, 'ascetic', too, under

the text<sup>2</sup> "Or he should wear clothes to cover his

"privy parts, and he may also take the requisites for his austerities,"

"as also sandals", may possess clothes books and other requisites

10 The professed student also can have clothes and other property for

his bodily sustenance (9) And it was therefore proper to explain the

distribution of such (property)

#### Vīramitrodaya

15 After mentioning the successors to the property of a householder, the Author mentions those of hermit etc

#### Yājñavalkya Verse 137

Under the text<sup>1</sup> "one should amass wealth, and the wealth thus

'amassed, one should give over in the month of Āṣvīn, the property

20 which a *vanaprastha*, 'hermit, possesses and under the text<sup>2</sup> "one may

'take the requisites for the yoga practises, as also sandals, the property

of a *yati* 'an ascetic, and the property of a *Brahmachari*, 'a celibate

student, such as clothes and such other things for covering (the body)

the characters of that are respectively the *ācharya*, 'preceptor, and the rest

i.e. in the absence of the prior, the next one etc. in order

25 *Ācharyo*, 'the preceptor, *sachekṣiṣyaḥ*, 'a virtuous pupil, i.e. a

pupil capable of listening attentively and assimilating the knowledge

of the soul, *śāśurīṣi*, 'a co-student, one who has received his learning

from the same preceptor, and the same also a brother in religious

practises, as the preceptor who is equal to a father, was the same

30 (for both) (137)

1 Of Yajñavalkya Praynschradhyaya 47 (p 190 ll 15-16) also Manu Ch VI 16

2 of a Smṛti—author not known

3 *Yogasambhārābhāṣā*—the different articles required for practicing yoga i.e. the works treating of the same (See Sabodhani p 76 ) G. Dalmabhatta p 245 l 15)



Sūtapani

Yajñavalkya Verse 137

*Dīrghabhrātṛ* a spiritual brother as also *ekāṅgī* an associate in holiness — thus it is a *karmadīpī* compound *Ekāṅgī* an associate in holiness : i.e. one who has a common preceptor The rest is clear (137)

[Colebrooke Sec IX]

✓ [On the union of kinsmen after partition]

✓ (1) The Author next propounds an exception to the rule that the wife and certain other heirs succeed to the estate of one who departs for heaven leaving no male issue

10

Yajñavalkya, Verse 138 (1st 3rd and 4th quarters)

A re united however shall keep the share of his re united<sup>2</sup> (parcener) who is deceased, or shall deliver it to one born

(2) Mitakshara—Effects which had been divided and which are again mixed together, are termed re united He to whom such appertain is a *samsrīṭṭi* a re united parcener

10

(3) Re union<sup>3</sup> moreover, cannot take place with any person indifferently but only with a father, a brother or a paternal uncle as Brhaspati declares “He who being once separated dwells again through affection with his father brother or paternal uncle is termed re united” (4) *Tasya Samsrīṭṭinā* of such a re united parcener the share or allotment must be given by

20

1 Next : i.e. after laying down the special rule of succession in the case of hermits &c the Author propounds another rule which is also of a special nature and is thus an exception to the general course of succession given in Yajñavalkya II 135 and 136 (p 1005)

2 The construction here is terse and also involved The first and the second quarters make in themselves independent clauses But these again are severally connected with the two verbs *dadāt* and *apaharet* in the third quarter which again are alternatively connected with the two qualifying expressions *patarya* and *mātarya*

The translation given here is as adopted by Colebrooke The Mitakshara takes the first quarter by itself and the 2nd 3rd and 4th quarters together separately So that as put by Vijnaneshvara the translation would read thus

(Verse 138 1st quarter) Of a re united however the re united

(2nd 3rd and 4th quarters)—Of a paternal brother however a paternal al deliver as well as keep the share (to) one who is born or (of) one who is deceased

3 Re-union—Must be proved as a fact Therefore according to the Mitakshara parties to re union must be those who were parties to their full partition and also that only father brother and uncle could re unite *Ram Varan Chaudhary vs Paniker* 37 Bom LR 144 (PC) 14 Patna 268 *Bazanta Aurora vs Jogendra* Aitch 33 Cal 371

4 Ch XXV 72 (Sacred Books of the East Vol XXXIII p 381)

the surviving re united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. On failure of male issue the re united parcener<sup>1</sup> alone shall take the inheritance and not the widow or any other heir.

(5) The Author states an exception to the rule that a re united member shall keep the share of his re united parcener.

Yājñavalkya, Verse 138 (2nd quarter)

But an uterine<sup>2</sup> brother of his uterine brother

(6) Mitakshara.—The expressions of a re united, a re united are to be (taken as) understood here. Hence, the allotment of an uterine re-united brother who is deceased, shall be delivered by the surviving uterine re united brother to a son born<sup>3</sup> of the re united. On failure of him he shall retain it. This is the construction as before. Thus if there be uterine and non uterine brothers together, the uterine re-united brother alone will take the estate of a uterine re united parcener and not the non uterine one even though re united. This thus is an exception to what has been said before.)

Sūlpani

Yājñavalkya Verse 138

The re united has been described by Brhaspati<sup>4</sup>. He who being "(once) separated dwells again through affection with his father or brother or paternal uncle such a one is termed re united. *Sarira/ta aḥ*. Of the re united such as the brother &c who is dead *sa sra/ta* the re united such as the brother &c shall take the property *Sadaras/ta tu*. Of the uterine brother however *1 e* (who was) re united *sadaras/ta* the uterine-brother re united alone shall take and not a step-brother. If the re-united die after conception was produced then upon the birth of the child in the womb his property one should give to him alone also.

1 The singular number is indicative of the whole class of re united parceners.

2 Colebrooke adds in bracket (or whole) but the expression in the text is *sadaras/ta*—meaning he who was born from the same womb. The term uterine may mean the same as whole in those cases where women marry only once. But it cannot be an universal equivalent as it is possible for a woman to have several sons from different husbands and such sons although they would be uterine brothers or *sadaras/ta* will not be whole brothers.

A uterine brother though not re united succeeds to his brother who had separated and had re united with the father. *Band a va Vaidh a 6 Luck 450 (F B)*.

3 *1 e* born subsequently to the death of the coparcener the widow's pregnancy not having been noticed then.

4 Oh XXV 72

This (rule as to the) right of the re-united is (applicable) in the absence of the son wife father and mother as says Brihaspati' If any "one die or enter the fourth order on any account his property will not lapse his re-united brother not being a step-brother shall take his property (138)

(7) Next in answer to an inquiry who shall take the succession when a re-united parcener dies leaving no male issue and there exists a half brother re-united and an uterine brother non-re-united the Author delivers a reason why both shall take and divide the estate

Yājñavalkya, Verse 139

A half brother, being re-united may take the succession but not a half brother not re-united but one united (by blood though not by parenthood) may obtain the property though not re-united and not (exclusively) the son of a different mother

Mitākṣarā (8) —Anyodaryah a non uterine brother, i.e. a brother born of a rival wife being samsrṣṭa a re-united parcener, takes the estate, na anyodaryo dhanam haret asamrṣṭa but not (that) a non uterine brother does obtain the goods who is not re-united Thus by the tests of the affirmative and the negative reasoning re-union has been shown to be a reason for a half brother's succession to the property

(9) The term 'not re-united' is connected also with what follows and hence even one who was not re-united may take the wealth of a (deceased) re-united (relative) Who is he? (so) the Author says Samsrṣṭah one united i.e. one united by the identity of the womb in other words an uterine brother By this it has been declared, that relation by the identity of the womb is the foundation of the (right of) succession of an uterine brother though not re-

1 Ch XXV 4

2 This text also admits of several constructions

3 In analogy of the rule in *Madhyamaṇi Vyāsa* or the maxim of the central jewel or *Kalāḥ* in *Vyāsa*—like a crew looking two ways

4 Upon this passage the author of the *Subodhini* remarks in like manner a father though not re-united with the family shall take a share of the property of his son and a son (though) not re-united shall receive a share of the estate of his father from a re-united parcener and in support of this conclusion he relies upon the passage *Manu IX 8* The husband enters into his wife and there having transformed himself into a father the wife becomes a mother &c. (See p 78 ll 2-5) But Balambhatta refutes this (at p 247 ll 16-20) and he refers in the end to the *Mitākṣarā* itself which makes (l 23) its own meaning clear by adding at the end that by it is meant the uterine brother

For Mayukha see text pp 67-67 & Tr pp 118-127 Gharpure's editions

united in coparcenary (10) the term "united" likewise is connected with what follows, and there the term 'united' signifies one who is 're united' (as a coparcener)

5 Nānyamâtrjah, *not the son of a different mother*, this expression must be interpreted by supplying the affirmative particle *etā*, 'alone', understood: *et* although re-united, one born of a different mother cannot exclusively take the wealth of his re-united parcener

10 (11) Thus, by the occurrence of the word *api*, 'though', in the expression 'though not re united' (above p 1113 l 10), and by the denial implied in the restrictive affirmation *etā* 'alone', understood in the expression "*one united* (by blood, though not by parcenary), *and* "*not the son of a different mother*" (above p 1113 ll 10 11), it is shown that the property should be divided and distributed to a whole brother not re united, and a half brother who is re united; (for the reasons of  
15 the right of succession of both subsist at the same time (and independently))

(12) Thus very thing is made clear by Manu' who after premising partition among re united parceners "If brethren, once divided  
20 "and living again together as parceners make a second partition etc." declares, 'should the eldest or youngest (of several brothers) be 'deprived of his allotment at the distribution, or should any one of "them die, his share shall not lapse. But his uterine brothers', and "such brothers as were re united, and also his uterine sisters shall assemble together and divide his share equally."

25 (13) Thus among re united brothers, if the eldest, the youngest or the middlemost,—"at the distribution"—during the distribution— (for under the rule of grammar) the undecidable termination *tas* denotes any case: *et* at the time of making the distribution—*be deprived et* forfeit, his own share, on  
30 account of his entrance into another order, or by the offence of Brahminhood or by any other like cause, or if he be dead his share shall not lapse, but shall be set apart, and not that the re united parceners shall take exclusively. This is the meaning.

1 Ch IX 210-212

2 Colebrooke translates 'uterine brothers and sisters'. The expression is *sodaryā* which may admit of sisters, but these have been again mentioned in the last clause

The Author states the appropriation of the share so set apart 'his uterine brothers shall divide it &c.' That share so set apart, his uterine brothers i.e. those born of the same womb even though not re united, "having assembled together" i.e. even though they had gone to a different country, still returning thence and assembling together, they should share it; "Equally" i.e. not by any measure of greater or less shares. Likewise those brothers who are non uterine (but) re united, and also the uterine sisters, all these should divide (and take) equally. Having divided equally, they should take. This is the clear meaning.

### Viramītrodaya

It has been stated that 'of one who has departed to heaven without issue, the successors to the property are the wife, etc., the Author mentions an exception to it

Yājñavalkya Verses 138, 139

Samsrāṣṭi, 'the re united, "He who being once separated, dwells again with his father, brother, or paternal uncle, is termed re united, thus stated by Brihaspati<sup>2</sup>, one who has property in re union should take the property of another member re united who has died without a male issue, and not the wife etc. of the re united

Jātanya, 'of one born, i.e. one who was in the womb at the time of the death of the re united and who was born afterwards, to such a son of the re united, one should give the share i.e. the property<sup>3</sup> belonging to his father

Of one, however, with whom the uterine as well as the non uterine brother have re united, the wealth of such a one, however, the uterine re united brother alone will take and not the non uterine re united brother. Here, the reason is that although non re united, a uterine brother alone takes the property of one who has died without leaving a wife and daughter, and not, that when they are living, a non uterine brother. Moreover, the meaning is that this particular rule is based on propinquity by relationship, even though it is not particularised by a state of re union

1 See above page 1114 I 22

2 Ch XXV 72

3 तद्विदुस्तद्विधान

- By the expression *apī cha*, 'even moreover', the Author adds the exception to the rule established before by the text of Vasistha viz. 'When, of an unseparated brother a uterine brother exists, the wife and the rest shall not take the property' By the word *tu*, first used
- 5 the Author discriminates the right of the wife etc. to take the property, by the second use, the right of the re united paternal uncle etc. to take the property, and by the third use, the absence of the right of the non separated non uterine brother to succeed to the property By the use of the several *chas*, 'ands', the Author adds the right of the re united even
- 10 if the wife etc. be existing, and of the uterine re united brother alone although a non-uterine re united brother be living, and although a re-united coparcener be living, the right to the property to be given to the son born after re union (138-139)

### Śūlapāṇi

- 15 Yājñavalkya, Verse 139
- ⌞ A non uterine re united (brother) shall not take the property of a non uterine (brother) ⌋
- Asamasyātyape* 'even though un reunited' a uterine brother alone shall take, not however, a re-united step-brother Some expound the word
- 20 *samasyāta* 're united,' as 'united in the uterus, i. e. a uterine brother
- In the reading 'not a non uterine shall take the property' the meaning is that if he be a non uterine brother, he shall not take the property This is with the object of declaring the right of an un re united uterine brother Therefore it is not open to the fault of tautology
- 25 After re union, if a partition takes place, the share shall be equal, as says Manu "If brethren, once divided and living again together as coparceners, make a second partition, there the distribution of shares shall be equal, in such a case a deduction for the eldest does not exist."
- Ureshpati states a special rule "If among reunited coparceners
- 30 'any one should acquire additional property through learning valour or other such means, to him an additional share must be given, and the rest shall be equal shares' (139)

1 Note here the difference of opinion between Śūlapāṇi and Yājñavalkya according to whom a non reunited uterine and a re united non-uterine brother take together This he does by implying *et* after *asamasyāta* ( see 1114 1 ( above ) While Śūlapāṇi does not imply *et* and takes the expressions excluding the non uterine brother entirely

[ Colebrook Sect X ]

[ Of exclusion from inheritance ]

(1) What has been said respecting the succession of the son the widow and other heirs as well as the reunited parcerer, the Author states an exception to that

5

Yājñavalkya, Verse 140

(An important person, one degraded and his issue, one lame a mad man, an idiot a blind man and a person afflicted with an incurable disease, and (like<sup>1</sup>) others, must be maintained excluding them from any share )

(2) Mitāksharā — Kṛibah an impotent person<sup>2</sup> i.e., one of the third gender Patitah, one degraded<sup>3</sup> i.e. a Brūhmicide or a like other Tajjah, his issue, i.e. one born<sup>4</sup> of an outcaste Panguh lame, i.e. one deprived of (the use of) his feet Umattakah a mad man i.e. one affected by any of the various sorts of insanity proceeding from air, bile, or phlegm from delirium or from planetary influences Jadah, an idiot i.e. a person deprived of the internal<sup>5</sup> faculty, meaning one incapable of discrimi

10

15

1 Adys Colebrooke translates as well as others (similarly disqualified)

2 Whether naturally so or by castration Colebrook citing Balam bhatti Narada gives several varieties of impotency see Ch XIII 10-13 and Balam p 209

3 So a widow who became a mohammedan and re married was held to have forfeited her interest in the husband's property Vatta Tayaramma vs Chataland : Sanyas 41 Mad 1078 (F B)

4 i.e. of one who has not performed the requisite penance or expiation (Balambhatti p 2001 17)

It should be observed that each disability excepting that of being degraded is personal Each of the persons specified here is mentioned as being personally incompetent to inherit except the degraded in whose case alone it has been stated that his incompetency extends to his issue See observations at pages 282 283 in Ganga vs Chandralagabai 32 Bom 270 See also Ram Sahye Bhakut vs Lalka Lalka Sahye 8 Cal 149 at p 152 and note

5 The distinction between a madman umattah, and an idiot Jada is nearly the same as these words convey by their import in the English language An umattah or 'a madman' is one whose intellect has become completely overpowered by some external force or influence which has established absolute sway over his faculties Such a man has no interval of sanity at all, while a jada or an idiot is not a totally insane but he is one who has become so dull in intellect, as not to be able to discriminate things which are advantageous to him from things which are of no advantage at all (See Balambhatti p 2501 14)

Insanity need not be congenital Mutakshams vs Veenammal 43 Mad 464

nating right from wrong *Āndhab*, a blind man,<sup>1</sup> & *e* destitute of the visual organ. *Achikitsyaroḡa*<sup>2</sup> afflicted with an incurable disease, & *e* affected by an irremediable distemper such as marasmus and the like

(3) Under the expression "Like others" *Ādya*, are comprehended one who has entered<sup>3</sup> into another order, an enemy<sup>4</sup> to his

1 The blindness referred to here means the blindness which is congenital. See Balambhatti p. 200 II 15-16 and the judgment of Westropp O J in *Morari Gokuldas vs Parasiba* 1 Bom 177, where the opinions of *Sāstris* recorded in West and Bähler's Hindu Law on the subject are examined, as also the original texts in the *Mitāksharā* and the *Mayūllā*

2 So deafness must be congenital. *Sastryas vs Ganesh* 51 Bom 50 and it must be shown to be incurable

And dumbness if congenital will exclude. *Bharmappa vs Vijayagouda* 46 Bom 455

But see *Mr. Dittay Kuari vs Rakeshwar Ram* 13 Pat 712 congenital Blindness does not exclude. The rule has become obsolete. *Surayya vs Subbaramu* 43 Mad 4

2 *Achikitsyaroḡa*—*chikitsā* is the treatment of a disease after determining its cause &c

*Leprosy* which is not congenital, does not debar the vesting of the birth right and therefore when a leper is the sole surviving member of a joint family the property shall vest in him absolutely, so that on his death it will go to his heirs and not as a reversioner to the heirs of the last competent holder. *Mool Chand vs Chohan Das* (1937) All 825 (P B)

Leprosy, however to exclude must be of the sanious or ulcerous and not of the anæsthetic type. *Karah Charam vs Ashutosh Nankh* 50 Cal 604, 51 I A. 177 at pp 178-180 and must be considered to be incurable. *Kayarahana vs Subbaraya* 38 Mad 200 and in *Pulakidas vs Padikal* 38 Bom L R. 207 it was held that non congenital leprosy does not disqualify one to be a coparcener, nor does he lose his right in the coparcenary property

3 The expression in the original is simply *Āiramāntargata*—which literally means "one who has entered into another order". An *Ārama* is a stage or period in the life of a man, and there have been laid down as four viz (1) *Brahma chara*, or the celibate life—the life of a student, (2) *Gārhasthya* or *Gṛhastha* *īrama* the life a house holder, (3) *Vānaprastha*, the life of an anchorite or hermit and (4) *Saṃnyāsa*, the life of absolute renunciation. Mr. Colebrooke translates as, 'one who has entered into an order of devotion', but in the note the expression used by him is 'another order'—and in the explanation is added—'Into one of devotion'. He mentions further on as orders of devotion, the *Brahmacharya*, *Vānaprastha*, and *Saṃnyāsa*. It would appear, however, from the expression used by *Yājñavalkya* that the exclusion would apply as soon as a change from one order into another took place (see also Balambhatti p. 250 I 18)

4 *Enemy to his father*—the 'enmity to father' referred to here would appear to consist both of an active commission of an act of hostility, as well as in  
(Contd on next page)



father, a sinner in an<sup>1</sup> inferior degree, and a person deaf, dumb or wanting in an organ. Thus, says *Yanishtha*<sup>2</sup> "They who have entered into another order are debarred from shares" By *Nārada*<sup>3</sup> also (has it been declared): "An enemy to his father, an outcaste, an<sup>4</sup> impotent person, and one who is a sinner in an inferior degree take "no shares of the inheritance even though they be *Aurasa*<sup>4</sup> (sons) "whence then (could) the *Kṣhetrajyas*" *Manu*<sup>5</sup> likewise ordains "Impotent

(*Contd from last page*)

the omission of the necessary duties enjoined upon a son towards his father *Asahāya* in his commentary on this verse of *Nārada* (XIII 21) observes विरुद्धो हि विरुद्धि । द्वेषो विरुद्धि मायादिभिर । द्वेषो ननु द्वेषेन उद्गमदिव्यभावात् ।

Tr "He who hates his father is 'an enemy to his father' Hatred or enmity consists in the desire to kill the father or to do similar acts, as also the absence of a desire to offer oblations of water &c to him after his death "

Dr Jolly observes on this passage as follows, (*Sacred Books of the East Vol XXXIII p 194 N 21*)

"The Commentators are at variance as to the precise meaning of the term 'Hostile to his father' Thus the *Sarasvatīhīna* declares it to denote one who forgets himself so far as to say, 'He is not my father' The *Dāyabhāṣya* says it means one who beats his father According the *Jagannātha* and the *Ratnākara* it means 'one who attempts his father's life or commits other hostile acts against him, and who fails to offer the customary funeral oblations to his father after his death " See Colebrooke's Digest V 4 329

1 *Asapādika* शिरसादिर् Colebrooke translates this word in two different ways in § 3 viz, as 'a sinner in an inferior degree' and as 'addicted to vice' The second translation has been subjected to comment at Allahabad in *Dal Singh vs Musammat Dina* 32 All 155-158 where the learned judges questioned the correctness of the reading शिरसादिर् itself and reference was made to Mr J O Ghose's *Hindu Law* p 236 where other readings are given शिरसादिर् would appear to be a better reading and has been given in the *Nārada Smṛti* edited by Dr Jolly

It should be noticed that the commentator on *Nārada* XIII 21 notices शिरसादिर् and explains it as तज्जगद्विद्वेन यत्कर्मजनम् ।

2 CL XVII 62

3 Ch XIII 21

4 Colebrooke translates—*Aurasa* as "legitimate" and *Kṣhetrajya*—"as sons of the wife by an appointed Kinsman" The two terms have been explained by *Yājñavalkya* and *Viṣṇuśāstra* while treating of several kinds of sons (see p 1010 &c) From a consideration of the law as stated there it would be more convenient to use the original terms rather than their English translations,

5 Ch IX 201

"persons and outcastes are excluded from a share<sup>1</sup>, and so are persons  
"born blind and deaf, as well as mad men, idiots, the dumb, and those  
"who have lost an organ<sup>2</sup>"

(4) *Nirandiryāḥ*, 'those who have lost an organ'—any person,  
5 from whom (the use of) an organ has disappeared on account of  
disease or other cause, is said to have lost that organ

(5) These persons—the impotent and the rest—are excluded  
from a share. They do not participate in the heritage. They must  
be supported by an allowance of food and raiment only. And if  
10 they are not maintained, the penalty of degradation is incurred. For  
Manu<sup>3</sup> says "But it is fit, that a wise man should give all of them  
'food and raiment without stint, to the best of his power for he, who  
'gives it not, shall be deemed an outcaste" 'Without stint' signifies  
'for life'

15 (6) They are debarred of their shares only if their disqualification  
arose before<sup>4</sup> the division of the property, but not one who had already  
been separated. (7) (And) if the defect be removed by medicaments<sup>5</sup> or  
other means even though at a period subsequent to partition, the right  
of participation takes effect, by parity of reasoning with the rule (in  
20 the text<sup>6</sup>) "When the sons have been separated, a son who is (after  
"wards) born of a woman equal in class, shares the distribution."

1 The original is *Anamīḥ śrāṇ* 'without a share'—this may mean a share on partition or from inheritance

2 *निर्अन्ध निरन्ध्र*—Colebrooke translates 'those who have lost a sense (or a limb)',—see however, I 173 *Śāṅkara's* explanation in the next paragraph

3 Ch IX 202 *Bāṇarīḥṭha* observes by reference to the texts of *Draṇa* and *Haudhāyana* that although these writers except an outcaste and his offspring from those entitled to maintenance still the exception applies to those offences only which are inexorable and not to those with reference to which expiation is possible. See *LalanMāṇṇ* p 250 II 29 3a and p 2a I II 1°

4 i.e. excepting those who were disqualified for natural defects *Bāṇarīḥṭha* p 251 I 2

The right of a member is only under suspense during the disability

5 See *Jaimini* VI 1 41 अथर्ववेद पृष्ठ 308 अथर्ववेद पृष्ठ 308

6 *Yājñ* II 122 (1) See above p 1022 II 15 16

(8) In speaking of an outcaste and the rest, the masculine gender is not here used<sup>1</sup> restrictively. And hence, it must be understood, that the wife, the daughter, the mother, or any other (female), being disqualified for any of the defects which have been specified, is likewise excluded from participation

5

### Viramītrodaya

The Author mentions an exception at some places, to the right of the son, wife, and the re-united to take property

### Yājñavalkya Verse 140

By the use of the word *atha*, 'and so, is included one deaf from the time of birth. By the use of the word *adya*, 'and like others, are included the dumb, the eremical to the father and like others, vide the text of Manu<sup>2</sup> "Excluded from a share are the impotent and the degraded, and so are persons born blind and deaf, as well as mad men, idiots, the dumb, and those who have<sup>3</sup> lost an organ, and also vide the text of Nārada<sup>4</sup> viz "An enemy of his father, an out-caste, an impotent person, and one who is a sinner in an inferior degree, these even though they be the *Aurasa* (sons) do not get a share, whence shall the *Kṣhetrajās*?

*Tappah*, 'born of him, i.e. born of the degraded *Panguh*, lame, i.e. deprived of the use of his feet *Jadah*, 'idiot, i.e. having a weak intellectual perception (140)

### Sūlapāni

### Yājñavalkya, Verse 140

*Tappah* 'his issue': i.e. begotten by the one degraded, *jadah*<sup>1</sup> an 'idiot', a dullard one not enthusiastic in the performance of a 'religious duty' Andho 'blind' i.e. congenitally blind. From the text of Manu<sup>2</sup> viz 'Born deafmutes also there is no room for a dispute

These i.e. the impotent and the rest, should be maintained for their life time with subsistence and covering (being offered to them). They are not entitled to a share (140)

1 अविज्ञान *Aviṣṭhāna* i.e. has been used without any special significance. That is to say the incapacity attaches to all persons alike without regard to sex.

2 Ob IX 201

3 *Naradaśāh*

4 Ob XIII 21

5 Mark the difference in the angle of vision of the Author of the *Mitākṣharā* and *Sūlapāni*. For while the *Mitākṣharā* takes a practical view of it as 'one who is incapable of discriminating right from wrong' *Sūlapāni* takes as the text of a viz the want of a desire for religious performance

(9) The exclusion from a share of the impotent and others<sup>1</sup> seeming to imply the exclusion of their sons also, the Author observes thus

### Yājñavalkya, Verse 141 (1)

(The Aurasa and Kṣhetraja sons, however, of these, if free from defects are entitled to allotments.)

(10) Mitākṣharā:—Eteḥām, of these, i.e. of the impotent and others; the Aurasa or Kṣhetraja sons, nirdoṣhāḥ, if free from defects, i.e. which should bar their participation, such as impotency and the like, bhāga-bāriṇaḥ, are entitled to allotments, i.e. become rightful partakers of shares.

(11) Of these, an impotent man is likely to have a Kṣhetraja son, the others may have the Aurasa sons even. The specific mention of the Aurasa and the Kṣhetraja sons is intended to exclude<sup>2</sup> other kinds of sons.

\* PAGE 100.

(12) The Author delivers a special rule concerning the daughters of the impotent and other disqualified persons

### Yājñavalkya, Verse 141 (2).

(The daughters likewise, of these, must be maintained<sup>3</sup> until they are wedded to<sup>4</sup> their husbands.)

(13) Mitākṣharā:—Eṣhām, of these, i.e. of the impotent and others, Sūtāḥ, the daughters, i.e. the female issue, until they are initiated by

1. i.e. the impotent and others enumerated above in II. 140 at p. 1117 ll. 7-9.

2. i.e. along with their disqualified parents. Bālabhāṭṭa adds (p. 251 l. 23) "A putrīśā also gets a share as being equal to an aurasa", and she too has been included in the word Aurasa" see note further on Yājñ, II. 142 and the observations of Chandavarkar J. in *Gangyā vs Chandraśhagabai* 32 Bom. 276 at pages 282-283 and notes

3. Maintenance—includes residence, food and raiment. *Charandās vs Nagubai* 31 Bom. L. R. 1126.

4. अगृह्यता—Colebrooke translates; "Until they are provided with husbands." The suffix सृज used with the root गृ means—"join to" or "consigned to" e.g. अगृह्यता, अगृह्यत इति.

A married daughter will not be entitled to claim maintenance after her marriage. She must seek her maintenance from her husband's family. See *Bai Mangal vs Bai Rukhmini* 23 Bom. 291 at p. 295

marriage, so long must they be supported Under the suggestion of the word *cha*, "likewise," the expenses<sup>1</sup> of their nuptials must be also defrayed

### Śūlapāni

Yājñavalkya, Verse 141

*Eśām*, 'of these', as may be possible, *Aurasāḥ* 'the Aurasā' and the *Kṣhetraja* sons, should be made the partakers of the shares of their fathers Their daughters also so long as they have not been given away in marriage, should be maintained (141)

(14) The Author adds a distinct rule respecting the wives of 10  
 disqualified persons

Yājñavalkya, Verse 142

The sonless<sup>2</sup> wives likewise of these, conducting themselves aright, must be supported,<sup>3</sup> but such as are unchaste<sup>4</sup> should be expelled and so indeed those who are perverse

(15) *Mitākṣharā*—*Eśām*, of these, i.e. of the impotent and others, *aputrāḥ*, the sonless wives *nidhivrttayaḥ*, conducting themselves aright,

1 The original expression is *Sansārīyāścha* संसारियाश्च : \* should have the ceremonies performed with reference to them These ceremonies have been enumerated by Yājñavalkya in *Ācatadhyaya* in verses 10-12 pp 30-41 above, and as regards women, he adds a special rule in 13 (2) thus—"These rites (are performed) silently for women, their marriage however, (is performed) with Mantra texts" See also *Manu* II 26-60, & II 60-67 for the *Sansāra* for women.

2 Colebrooke Tr "Childless," but the expression in Yājñ is अपुत्र *Aputrā* and not अपुत्र्य *Anaputryā*

Discussing this text, among others, Chandralekha J has held that "the widow of a disqualified person is not excluded from inheritance merely by her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude from inheritance" *Ganga vs Chandralekha* 32 Bom at 276

3 Brother in law is bound to maintain a deceased brother's widow If father's self-acquired property descends to him *In Am vs Sarwat* 4 La k 401 (F D)

4 If she lives in adultery and persists in it, a wife is not entitled to maintenance *Dela Saran Shukul vs Deolita* 39 All 234

But where a wife is found to have lapsed, but to have changed her ways subsequently, she was given a starting allowance *Satigubhara vs Ashtoracharya* 39 Mad 618

- 1 c if they are correct in their conduct, bhartavyāḥ must be supported, or maintained Wyabhichārīyāḥ the unchaste, however, nirwāsyaḥ, should be expelled pratikūlastatbaiva cha, and so indeed those who are perverse, 1 c they deserve to be expelled But they must be supported, provided they be not unchaste For, (it is) not that even a maintenance must not be given solely on account of perverseness

### Viramitrodaya

- The impotent and the rest being declared to be not entitled to a share, the incapacity of their sons also may follow, as also (might follow) the non necessity for the maintenance of their daughter, wife etc The Author refutes that

### Yājñavalkya Verses 141, 142

- Teshām, Of those, 1 c of the impotent and the rest Kshetrajāḥ the 'Kshetraja sons, and also the Aurasa sons of the impotent and the rest, 15 if they are free from the defect of impotency and the like, become entitled to a share, bhagakarīṇaḥ

- Eśāṁ, 'Of these, 1 c of the impotent and the rest, the Kshetrajāḥ, and of others than the impotent, the daughters as long as they have not been joined to their husbands, 1 c made over to a bridegroom, so 20 long should they be 'maintained very properly 1 c similarly like one's own daughters.

- Eśāṁ, Of these, 1 c of the impotent and the rest, Yoṣhitascha, 'the wives also, who had been married by reason of the impotency not having been determined, Sādhurīṭayāḥ, 'conducting themselves aright, 25 1 c if well behaved, then bhartavyāḥ, 'should be maintained

- Vyabhichārīyāḥ, 'the unchaste, as also those who are extremely pratikūla 'perverse, nirwāsyaḥ, should be expelled, 1 c should be driven out of the home By the first cha, 'and, is added by inclusion that 'they should have the sacrament performed for them, and by the 30 second, 'those who indulge in drinking liquor, etc By the use of the word cha, 'also, the Author excludes the right of maintenance (141-142)

### Sūlapāṇi

### Yājñavalkya, Verse 142

Their sons (wives) etc. The meaning is clear (142)

[ Colebrooke Sec XI ]

[ On the separate property of a woman ]

(1) 'After briefly propounding the division of wealth left by the

1 From here begins the law regarding 'a woman's property' The author of the Mitāksharā does not appear to be inclined to lay down any particular limit to the word *stridhana*. He has distinctly laid down further on that the term *stridhana* is to be understood according to its literal meaning and no technical significance has any scope. The introductory remarks are very significant. The author says that after having briefly described the division of wealth left by the parents, generally, and after having described the devolution of wealth of a male, the sage Yajñavalkya propounds the devolution of wealth obtained by a female. Taking this as it stands and reading it in connection with the special remarks of Vijnanesvara about the meaning of the term *stridhana* it would appear that according to him, all property acquired by a woman was to be regarded as her *stridhana*, and this would appear to be in agreement with the general sense in which that term is understood in Western India or more particularly in the Bombay Presidency. See observations of West J in *Bhagurshahar vs Kankarav* 11 Bom 285 (F D) at p 299 also *Bhaskar Trambak vs Mahadeo* 6 Bom H C B (O O J) 1 at p 13 and the observations of Candy J in *Gaudh: Nayandul vs Bai Jada* 24 Bom 192 at pp 194-206. The application of the principle of *Shro devas* to question about the *stridhan* has worked strange results. For whereas there may be good authority in Bengal and the allied provinces for the proposition that 'a woman is incapable of acquiring any property' there is equally good authority for the proposition that whatever a woman acquires is her *stridhan*, and at least in the Bombay Presidency not only that there would be nothing strange or new in such a proposition, but any other statement of the law would be received with surprise. By a strange combination of circumstances however the doctrine that a woman as a rule takes a limited estate as only *during her life*, has come to be engrafted upon the general law of this Presidency, and this on account of the merest accident that cases first went in appeal to the Privy Council either from Bengal or Madras, the appeals from Bombay being of a comparatively later date. The Board in England had before them questions wherein the meaning and significance of passages from the *Mitāksharā* had to be discussed and the conclusions once drawn were engrafted upon discussions and cases in other parts of India without much regard to the accepted sense of the people of that particular province. It would thus appear that the principle of *Shro devas* has no application in cases of this nature inasmuch as there have been no cases as such to give scope for the application of that doctrine. The most recent instances of the strange results of this general interpretation of the texts for all the Provinces will be found in the language of the judgment of *Deri Mangal Prasad Singh vs Mahadeo Prasad Singh* 31 All 234 (P C) and *Shro Shikhar Lal vs Deri Sahai* 25 All 468 30 I A and *Shro Partab Bhakhar Singh vs Mahadeo Bank* 25 All 476-30 I A 209.

husband and wife (in the text) "The sons should divide (equally "both the assets and the debts) of the parents . . &c," the distribution of a man's goods has been described at large. The Author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it

### Yājñavalkya Verse 143

(What was given (to a woman) by the father, the mother, the husband or a brother, or<sup>2</sup> was received by her at the nuptial fire, as<sup>3</sup> also that which was presented to her on her husband's marriage to another wife or any other, is denominated (*strīdāna*) a "woman's property.")

(2) Mitākṣharā —That which *pātrmātrpāubhātārdattam*, *was given by the father, the mother, the husband as also by a brother*, as also that which was presented (to the bride) by the maternal uncles and the rest at the time of the wedding before the nuptial fire, and *ādāhivedanikam*, *that which was presented to her on her husband's marriage to another wife*, as a gratuity on account of supersession as will be subsequently explained (in the text) "let him give to a wife who has been superseded &c", and as indicated by the word *ādya*, *any other*, also

1 Yajñ II 117 p 1002 ll 7-8

2 i.e. other than the gifts received by her and otherwise described

3 The original is *cha* Colebrooke translates Or

The *Adāhivedanika* is that land of a woman's property which is given to her as a solace for the grief of supersession by another wife. Yājñavalkya has enumerated the circumstances under which a wife could be superseded see the *Acharādhyaya* Verse 73 and 74 (pages 194-196 above) and in Verse 75 (p 199) he lays down a penalty for the supersession of an obedient wife and gives her a third of the husband's share. See for this *Yajña* II 146 and the *Mitākṣharā* thereon. See also *S. Jodhan* p 71 ll 70-31

4 *Yajñ* II 146

5 *Ādya*—Any other. This is a very important term in the *Smṛti* literature inasmuch as the *Smṛti* writers and commentators have freely made use of it for taking on such provisions to the existing law as they thought necessary. The word *Ādya* here as in *Yajña* II 146 has been utilized to introduce provisions which were not stated in the *Yājñavalkya Smṛti*. Another term of which similar use has been made is *cha* and it is under cover of this term that the daughter's son has been introduced by *Vijñanesvara* as an heir (see above page 1067)



property which she may have acquired by inheritance,<sup>1</sup> purchase, partition, seizure, or finding, are denominated by Manu and the rest *strīdhana* "woman's property"

(3) (The term *Strīdhana* ("woman's property") conforms, in its import with its etymology, and is not technical: for, if the literal sense is admissible, a technical acceptance is improper. (4) As for the enumeration of six sorts of *Strīdhana* by Manu<sup>2</sup> viz. "What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection<sup>4</sup> or respect, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman," that is intended, not as a restriction<sup>3</sup> of a greater number, but as a denial of a less )

(Contd from last page)

This term *Ādya*, which has sometimes been referred to as "the mysterious *Ādya*" has received so much attention from the courts and so copiously, that it is absolutely unnecessary to refer to any case. It is important, however, to note its derivation and significance. It is derived as *आद्य* *आद्य*. That which was produced first. When used in the Masculine gender it is used to express 'the first'. Other terms used are *पूर्व*, *प्राग्* and *अग्र* (See

*Derivation* Anura III 1-80 and the Ramasramat thereon). It indicates that the word to which it is affixed is the first of a series consisting of others. Its use with such a word indicates cognate ideas proceeding from such a term of *synalem generis*.

1. So according to Vyāsaśāstra wealth obtained by a woman by inheritance, &c., is her *Strīdhana*, and also that the term *Strīdhana* does not admit of any other meaning than can be deduced of its etymological import. (See Bālabhāṭṭa p 263 II 18-30)

2. Cf. with this, the following three maxims which bear the same import

- (1) अथयदिद्विजानवादिनरे त्वेतिन सत्येतिम् ।
- (2) अथयदाभावात्सम्भावात्सद्वयेनवा कदाभावात्सद्वयेन कदाभावात्सद्वयेन ।
- (3) विद्यमानेति कतिपयवदन् ।

It is opposed to the doctrine of Jimata Vahana. See note above

3. Cf. IX 104

4. "This passage is read differently by *Pitāmāra* and by *Jimata Vāhana* (IV 1 4). It is here translated conformably with Bālabhāṭṭa's interpretation grounded on the subsequent text of *Āśīgāya* (further on) where two reasons of an affectionate gift are stated one simple affection the other respect shown by an observance at the woman's feet." Colebrooke

5. Otherwise, even the six kinds enumerated by Manu would be contained: told by the specific kinds enumerated by Yājñavalkya and Narada. (See Bālabhāṭṭa page 263 II 20-27)

(5) Definitions of *adyadhyagni*, 'presents given before the nuptial fire,' and the rest have been delivered by Kātyāyana<sup>1</sup>, "What is given to  
"a woman at the time of her marriage near the (nuptial) fire, is  
"celebrated by the wife as 'women's property', *stridhanam*, bestowed  
5 "before the nuptial fire' *Adhyagni*"

"That, again, which a woman receives while she is being conducted  
"from her father's house<sup>2</sup> is instanced as the property of a woman under  
"the name of 'gift presented in the bridal procession' *Adhyādravanikam*."

10 "Whatever has been given to her through affection by her  
"mother in law or by her father in law, is also<sup>3</sup> what is received by her  
"at the time of saluting the feet of the elders is denominated 'an  
"affectionate' present' *Pitṛdātam*"

15 "That which is received by a married woman, or by a maiden,  
"in the house of her husband or of her father, from her brother or  
"from her parents<sup>4</sup> is termed *Saudāyikam*<sup>5</sup> 'a kind gift'"

1 Verses 890-897

2 Mr Colebrooke adds a note The *R. tadā* and *Chātaman* read "from the parental abode. The original expression there is *पितृगृहं हि देवगृहं* and it would make no difference whether it is *पितृगृहं* or *देवगृहं* both the expressions having the force to indicate 'the abode of her father : & the parental abode.' It may be noticed that the expressions are used in contradistinction with the 'husband's abode' (*वसुगृहं*). The corresponding Marathi word *गृह* would make this quite clear, the idea being that she is being carried from the house of her birth to the new home by marriage.

Property bequeathed by the maternal grand father is her *saudāyika* *stridhanam*, which she can alienate without the consent of the husband. *Venkatadā vs Heri* *munigonda* 34 Bom L R 1144=51 Bom 85 *Muthukaraya Pillai vs Sathyanarayana* 3 Mad 298

3 Mr Colebrooke mentions a reading in the *Smṛti Chandrikā*—"given to her at the time of making an oblation at her feet" while no such reading is available either in the *Smṛti* Text of the *Smṛti Chandrikā* or the translation by Mr Kṛishnaswamy (IX 2). The *Smṛti Chandrikā* simply quotes the text of Kātyāyana as here and adds *पितृदत्तं वा पितृ स्वयमेवेत्यम्*. The *Pāṇiniya laṅkā* (means)—given at the time of the salutation of the feet. And the *पितृदत्त* is generally made by the newly married bride going for the first time to her husband's abode.

4 See note above. The *Smṛti Chandrikā* and the *Īśvaranirṇaya* follow this reading. But the *Ratnākara Chātaman*, and *Vaṇikā Chātman* read 'denominated as a question through love' *Idānyāntam* (*प्रत्ययान्तम्*). Colebrooke

5 The Bengal reading *पितृ स्वयमेव* 'from her husband instead of *पितृ स्वयमेव*. See Bālabhāṭṭa p 204 II 7-8. He notices the interpretation by the 'Fasteners' (*पितृ*) on this term and adds at the end that this is (in addition to and) different from all the property referred to above. 6 Verse 901

Sūlapāni

Yājñavalkya, Verse 143

*Adhyantri*, 'at the fire,' i.e. near the fire at the time of the wedding, by the father and others, *datam*, 'was given' *Adhyanamant*, 'as a solace for her agony,' i.e. at the time of the second marriage, what was given to the former wife

5

By the use of the word *anyat* 'or any other,' after *ādhyvedanika*, are included in the *śrahanika* and others, vide *Kātyāyana*<sup>2</sup> "that again which a woman receives while she is (being) conducted from her father's house, is called *adhyamihaukanam*, a kind of *śradhanam*" (143)

10

(6) Besides, (the Author says)

Yājñavalkya, Verse 144 (1).

That which has been 'given to her by her kindred', *bandhūdatam* as well as her 'fee or gratuity', *Śulam*, or anything 'bestowed after marriage' *Am ādheyakam*

15

Mitākṣharā—Bandhobhish, by her kindred, i.e. by the *mātṛbandhus* as well the *pitrbandhus* of the damsel; yad datam what has been given,

1 अग्निद्विद्विः i.e. the pain caused to her on account of the husband marrying another wife. As for the *द्विद्वि* and the mutual rights and liabilities of the wife and the husband in that connection see *Āchārādhyāya* Verses X 73, 74 and 76 Text pages 18-19, and tr. pp. 194-200 above (Part I)

2 Verse 894

3 "Her kindred"—i.e. her kindred through her parents before marriage, and her kindred through her husband after marriage. These i.e.—the parents and the husband—are the *media* through whom 'her kindred' are to be determined. The kindred of a person—whether male or female—are those who are directly related to such person individually, or mediately through others who are kindred of that person. In the case of a male the three kinds of kindred or *bandhas* have been enumerated above. The case is somewhat different in the case of a female. For, (1) after marriage, her *bandhas* are those of the husband if the marriage be in an approved form. It is only when the marriage is in an unapproved form that her kindred are those in her own individual right, and these would be her children &c. and those relations connected through her parents.

(2) Before marriage, her kindred are either her father's kindred or her mother's kindred which would again mean her father's kindred alone, unless her mother's marriage was in an unapproved form. See further on under verse 145 and also the observations of Chanderavarkar J. in *Janghwa vs Jetha Appy*, 32 Bom 409 at p. 413, *Telaram vs Ramasundar* 35 Bom 339

i.e. by these *Sūka*,<sup>1</sup> the gratuity or fee, that after the receipt of which a girl is given in marriage *Anuvādheya* kam, what is bestowed after marriage, and, following, i.e. subsequently to the marriage, what has been *āhita*m, deposited, i.e. given.

- 5 (7) It has also been said by Kātyāyana<sup>2</sup>: "What is obtained by  
"a woman from the family of her husband at a time subsequent to  
"her marriage, is called an *Anuvādheya* or 'gift subsequent'; and so also  
"that which is similarly received from the family of her father."—is  
10 termed "a woman's property;" thus is this passage connected with  
that which has gone before

#### Vīramītrodaya

- Thus having in details stated (the law relating to) the property of a male, the Author treats of *strīdhana*, 'the woman's property', with a view to discuss the 'mother's wealth' stated before in the text<sup>3</sup>: "Of  
15 "the mother's (property), the daughters (shall take) the residue after  
"(the payment of) debts; in their default, the issue (succeed)."

#### Yājñavalkya, Verses 143, 144 (1)

- By the father and others, given through affection; *adhyaṅni*, 'in the presence of the fire', i.e. near the fire, at the time of marriage, what was  
20 obtained from even an outsider'. *Āhita-danīkam*, 'on the occasion of supersession, as may be hereafter stated in the text': 'To a superseded wife one should give' etc.

- By the *bandhus*, 'kindred, such as the maternal uncle and others, *datīam*, 'given, through affection; *sūka*m i.e. wealth settled by the  
25 father and others intended to be given to the bride and the bridegroom; *Anuvādheya* kam, 'gifts after marriage', such as stated by Kātyāyana<sup>4</sup> viz.

1 Bālabhāṭṭa (p. 254 II 14-15) states that according to the interpretation of *Kalpataṭra*, this refers to the property of a nester married under the *Āsura* form. He also states the interpretations put by Kātyāyana and Vyāsa on the term *śā*

2 Verse 899

3 Yājñ. Verse II7 (3rd quarter) p. 1004, II 21-22

4 Yājñ II 148

5 Verse 898



"mother, that has been declared as *Anuādheya* as also that which was  
"obtained from the father's family"

- This property as also the property of a woman married under the  
*Āsura* and the like form, who has died without a child such property  
5 of her as was given by the kinsmen and others, her relations : e the  
brothers shall take. As says *Gautama*<sup>1</sup> 'The sister's *sūla* goes to the  
"uterine brother after the mothers, some hold, even before" 'After the  
mother' : e after her death When the mother and the father, however,  
are living, then it goes to these only, vide *Manu*<sup>2</sup> 'That property of  
10 'hers as may have been given to her in marriages like the *Āsura* and the  
'rest, upon her death without progeny, such property is intended to be  
"for the mother and the father" (144)

- (10) The kinsmen have been declared generally<sup>3</sup> to be competent  
to succeed to a woman's property The Author now distinguishes different  
15 claimants according to the diversity of the marriage ceremonies

### Yājñavalkya, Verse 145

- { The property of a childless woman, married according to any of the  
four forms such as the *Brāhma* and the others, goes to her husband; it  
will go to her daughters if she leave progeny; and in other forms of  
20 marriage, it goes to her parents }

(11) *Mitāksharā*:—*Aprajasah striyāḥ*, of a childless woman, as before<sup>4</sup>  
stated, and who had obtained<sup>5</sup> the status of a wife by any of the four

1 Ch XXVIII 23-24

2 Ch IX 197

3 See *Janglūba* vs *Jatā Appa* 32 Bom at p 414

4 i.e. according to the first four forms which are considered as the 'approved forms' of marriage, viz the *Brāhma*, *Dvaya*, *Ārsha*, and *Prājāpatya* See *Mitāksharā* further on

5 i.e. the last four forms called the unapproved forms viz the *Āsura*, *Gāndharta*, *Rākshasa* and *Paśūdaka*

6 i.e. in *Yājñ* II 144 i.e. without any of the five descendants mentioned above *Bajantika* p 206

7 *Bhāṣyāntarī prapitṛgāḥ* (अनुपपन्नः) Literally "who has obtained wifehood" Colebrooke translates—"who had become a wife"

modes of marriage denominated *Brâhma*, *Daiva*, *Āraha* and *Pitṛyapaitya*, (and) who has died, *dhanam*, the property,<sup>1</sup> as before described devolves<sup>2</sup> in the first place *bhartar*, on her husband. On failure of him, it devolves on the *sapindas*<sup>3</sup> nearest to him. But Śeṣheṣhu, in other forms,<sup>4</sup> of marriage i. e. (those denominated), the *Āsura*, *Gāndharia*, *Ritāsana* and *Paisāclat*, lat, it, i. e., the property of a childless woman *pitrgāmi*, goes to her parents. The words *Mātā* (mother) and *Pitā* (father) when combined make up the compound *pitarau* (both parents). That which goes to these two is *pitrgāmi*. Although the mother has

1 i. e. the whole property (Balambhatta p 256 l 22)

2 *Bhartur* (भर्तुः) Lat. "becomes the husband's (property)"

*Stridhana*—succession where it was held that marriage in the *Āsura* form was well recognised in a community in the sense that it was 'approved,' the husband's heirs were held entitled to the *Stridhana*: *Asaka Devi vs Sheo Palan* 48 All 126 and in this case the court held (p 135) that where a particular form was not regarded with disapprobation, the other aids must prove that it was not of the approved kind

To the *stridhana* property of a woman also by adoption along with another or wife, and a son born of another wife succeed equally as husband's *Sapindas*: *Gangadhar Bogla vs Hiralal* 43 Cal 544

The *stridhana* of a remarried girl goes equally to the son of her first husband and by the second husband: *Bapu vs Kashi Nath* 36 Bom L R 140

Under the V. *Mayukha* the non technical *stridhana* goes to a son in preference to a son's son: *Basu Ramon vs Jagannadas* 19 Bom L R 629—41 Bom 618. As between a legitimate son and an illegitimate daughter born in prostitution the son is entitled to succeed: *Mannabhai vs Vismund* 38 Mad 1144

3 Colebrooke translates, "It goes to his nearest kinsmen (*Sapindas*) allied by funeral oblations." This definition or description of a *Sapinda* may be correct under the law in Bengal. The *Mitākshara* understands that term quite differently (See Yajñ I 52 pages 150–151 and *Lallubhai vs Manikowar* 2 Bom 388 at p 423. See also Telang J in *Gujarat's case* in 17 Bom 114 at p 117 and *Parmappa vs Shiddappa* 30 Bom 607—8 Bom L R 685. See also note 1 on page 1071 above.) This translation therefore of the term *sapinda* is not good so far as the *Mitākshara* is concerned and has been criticised in several cases the most recent of which is *Nanda Palan vs Sivasubbashack* 36 Mad 116 and cases cited there. As regards the succession of the husband's *sapindas* see *Arishnabai vs Shripati* 30 Bom 333—8 Bom L R 12. *Basu Aswari vs Hunsey Morari* 30 Bom 431 (p c) at p 443. And generally also *Jangubai vs Jetha Appaji* 32 Bom 409 at pp 412–413 and *Tularam vs Narayan* 36 Bom 339 at p 345 (F. B.)

4 i. e. the remaining four called the unapproved,

already been indicated in the elliptical<sup>1</sup> compound, still her prior (right of) succession has already been<sup>2</sup> specifically mentioned before. On failure of them the (right of) succession is that of their<sup>3</sup> nearest relations<sup>4</sup> by propinquity.

- 5 (12) Indeed in all forms<sup>5</sup> of marriage, if the woman be *prastūā*,  
     *leave progeny*, i.e. if she leave issue, *tal, it, i e.* her  
     *property, dāhnam, will go to her daughters*. Here  
     by the term 'daughters', 'daughter's daughters'  
     are<sup>6</sup> expressed, since the daughters themselves have been expressly  
 10 mentioned in the (preceding<sup>7</sup>) text. 'Of the mother's (property) the  
     "daughters (shall take) the residue &c.'" (13) Hence also, upon the  
     death of a mother, the daughters first take the mother's property<sup>8</sup>.  
     And there also, in the case of a competition between the married and  
 15 the unmarried (the unmarried (take)). But on failure of these, the  
     married (take). And there also, in the case of a competition between  
     such as are endowed<sup>9</sup> and those who are unendowed the unendowed

1 Called the *Elipsis* or residual *Desinē*. In this compound only one word is retained and the others are dropped, the one word remaining having the capacity to express the others dropped. See note 3 on p. 1001.

2 i. e. p. 1001 l. 3.

3 Their, i. e. of the parents. See note 3 above on page 1180. For a fuller discussion on the meaning of the pronoun *ya* see *Tutaram* vs. *Varayan* 30 Dom 339 (F B).

4 *Tatpratyāsa mātām*—*Pratyāsanam* are those relations whose claim is based on propinquity. Colebrooke translates 'their next of kin'.

5 *Sarvareccu*—i. e. as regards the right of succession of the issue, they take precedence in all cases irrespective of the particular form of marriage. But the issue or progeny here means her own i. e. and not the issue of a co-wife. The particular case of the succession of the daughter of a co-wife of a superior class would not otherwise have been specially mentioned. See also *Bhāmacharya* vs. *Janakacharya* 33 Dom 402, where the husband was allowed preference over a step-son. *Bhambhātya* notes several readings. See p. 207.

6 *Uchyanu*—*यज्* i. e. are expressly signified and not merely to be inferred.

7 Of Yājñavalkya II 117. See p. 1001 l. 21-22.

8 *Mātridharmat* i. e. the *Stridharm* of the mother.

9 *Prastūā*—i. e. well established in life well provided for. Comparative poverty is the only criterion in cases of competition between the married daughters and it is not intended that an inquiry should be held going into all the

(Contd. on next page)



take (the succession first); and on failure of them, those who are endowed. As says Gautama: "The *Strīdhana* property goes to the "Daughters unmarried," and (failing them) to the unendowed." Here the use of the particle *cha*, 'and', makes it devolve on the endowed also. "Unendowed" are such as are without issue or are destitute of wealth.

(14) But this (rule holds) with the exception of the *Sūlla*. For the *Sūlla* goes to the uterine brethren only. Vide the text of Gautama: "The sister's *Sūlla* belongs to the uterine brothers, after (the death of) the mother."

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minute details of income &c. See Ranade J. in *Totams vs. Dasgupta* 23 Bom. 226. "When, however, the difference in wealth is marked, the law requires that the whole of the property should go to the poorest daughter." *Id.*, and also cited on pages 252 and 253 of the report. The Unendowed are explained further on as being those who are without issue or are destitute of wealth.

In *Bagara vs. Parvata* 36 Bom. T. R. 118 it was held in the case of a male that a posthumous daughter was entitled to succeed.

1 Ob. XXVIII 22

2 The unmarried excludes the married *Shree Gound vs. Para Adhik*, 8 Luck. 162.

3 Ob. XXVIII 23, 24

4 *Sūlla*—Colebrooke translates this as "the fee or gratuity." This is in accordance with the explanation given in *Kalpataṛa* and quoted by Balambhatta on (p. 254-14), अगृहीतविशेषेण संपत्तिं पत्युः *Tr.* "The property of a sister married according to the *Āura* or similar forms of marriage" is the bride price. To the same effect is Haradatta on Gautama's text. Balambhatta notices two other definitions or descriptions of this kind of *Strīdhana*, viz. those given by Kalyāṇa and Vyāsa. —*Ādityaguna* defines it as

प्रधानः संपत्तिर्नाम दौहित्रमण्यमनाम । अन्यं तु यत् संपत्तिचिह्नं न स

*Tr.* "Whatever is obtained as the equivalent of household utensils, of beasts of burden, of milk cattle or ornaments, is declared (to be) *sūlla*, and this has also been cited in the *Vyavahara-Mayukha* and *Dayabhaga* IV 3 19-20.

*Vyāsa* defines it as संपत्तिं संपत्तिं संपत्तिं संपत्तिं and Balambhatta explains it as संपत्तिं संपत्तिं संपत्तिं संपत्तिं संपत्तिं &c. presents &c. given to induce her to go to her husband's house, and thus it is very much like the *Adhyāśānaka*. See *Dayabhaga* IV 1 6.

5 This interpretation is according to that given in *Sabodham* (p. 77 i 5) Balambhatta (p. 257 i 22) and *Kalpataṛa* explain it similarly, and so also Haradatta. The *Dayabhaga*, however, interprets it differently. According to

(Contd. on next page)

(15) On failure of all the daughters, the daughters' daughters take under this text<sup>1</sup>: "It will go to the daughters if she leave progeny, &c"

(16) If there be a multitude<sup>2</sup> of these (and if they be) children of different mothers, and unequal in number, shares should be allotted to them through<sup>3</sup> their mothers, as directed by Gautama<sup>4</sup>: "Or, according to the mothers,<sup>5</sup> let the special share (be adjusted) in each class"

(17) If there be daughters as well as daughters' daughters simultaneously<sup>6</sup>, a trifle only should be given to the daughters' daughters As has been directed by Manu<sup>7</sup> "Such of the daughters of those (daughters) as may exist, even to those, something<sup>8</sup> should be given, as may be fit, from the property of the grand mother, on the score of affection"

(18) On failure also of the daughters' daughters, the daughters' sons are entitled to the succession As says Nārada<sup>9</sup> " (Let) daughters (divide) their mother's (wealth),

( Could from last page )

the Dayabhāga, first the uterine brothers &c—and then after them, and in their absence, the mother and then the father &c take (see IV 27-29) Balambhatta explains 'Mother' here, to be the woman herself & the sister herself (See Balambhatta p 707 l 23) 1 = Yājñ II 145 (3rd quarter)

2 Samādāya (समादाय)—is a collecting together of persons with conflicting claims

3 The principle of the rule enumerated here is the same as laid down in regard to the property of a monk, where several persons lay claim through their respective male ascendants &c that laid down in Yājñ II 120 (p 1017 ll 23-24)

4 Ch XXVIII 15

5 = the share of a particular claimant is to be determined by regard to the number of her mother's sisters as well as that of her sisters, in other words *per stirpes* first and then *per capita*

6 Here the word Samādāya does not predicate any claim on behalf of the daughters' daughters It only indicates their co-existence along with the daughters

7 Ch IX 193

8 Something, *चित्तं*—Kulluka holds that the grand-daughters should be unmarried Sarvajña Ācāryana says, 'When the married daughters are dead their daughters shall be presented at will by their maternal uncles with the share which their mothers would have received as a token of respect' Pāṇḍarānanda too thinks that 'on the score of affection' means 'at the pleasure (of the heirs)' But Acotana deduces from the same term the absolute necessity of the gift Böhler.

9 Ch XIII 2

"or, on failure of daughters, their (male) issue." For, the pronoun *it*,<sup>2</sup> refers to the continuous term 'daughters'.

(19) If there be no daughters<sup>3</sup> sons, sons take (the property); for it has already been declared:<sup>4</sup> "In their default, the Sons (male) issue (succeed)." *Manu*<sup>5</sup> likewise shows the right of daughters as well as of sons to the mother's effects: "But, when the mother is dead, all the uterine brothers shall equally divide the mother's property, and also the uterine sisters." (20) The maternal estate, all the uterine brothers should divide equally, and also the uterine sisters should divide equally: such is the construction And the meaning is not that 'uterine brothers and sisters share together', for since the abridged<sup>6</sup> form of the conjunctive compound has not been employed, reciprocation<sup>7</sup> cannot be (construed to have been) indicated;

1. तद्वत्—The *Sarvadandakā* interprets this as 'the female issue' स्त्रीवत्। पत्न्यास्त्रीवत्तद्वत् इति यद्वत्ते (See p 286 l 2) Colebrooke translates as "(male) issue".

2. See Bālabhāṭṭi p 258 The result as to the order of succession, on account of this note of the *Mitākṣharā* is as follows —

"After the mother, her daughters take the *stridhān*, in the absence of the daughters, from those among her issue, the daughter's daughter take first, then the daughter's son, &c

*Jināta* Vāṇsa seems to have understood the pronoun *it* as referring to the word "mother". See *Dīyabhāga* IV 2-13

3 Colebrooke translates "If there be no grandsons in the female line"

4 Yājñ II 117. (p 1030 l 20 above) See *Bhāmacharya* vs *Ramacharya* 33 Bom 452 at p 456.

5. Ch IX 192. The *Anupurāṇa* reads *Sarva putrāṇ sahodarāṇ* (See Bālabhāṭṭi p 259 l 18 )

6 *Samādāya*— i together at a time The meaning is that the two sets of heirs viz. the uterine sisters and uterine brothers, do not take together, but that each set takes separately

7. See notes on p 1091, 1092 (*supra*) as regards the several meanings of *cha* and the characteristics of an *Elativā* compound

8. If reciprocation were meant to be indicated in the text of *Manu*, the word *Bhrātṛ* 'brother' would have been used inflected, however, in the dual number to denote 'brother and sister' ( *Pāṇini* I 2-83 ), or else 'children' or some generic term, would have been employed in the plural ( *Pāṇini* I 2-64 ) But the text is not so expressed, consequently reciprocation is not indicated See *Sabodhinī* p 77 ll 19-25, Bālabhāṭṭi

the (conjunctive) particle *cha* can even be construed to have been used with reference to the person making the partition. As in the example, "Let Devadatta practise agriculture, and Yajñadatta also." (21) "Equally" is specified to forbid the allotment of deductions

5 'Uterine' is used (with a view) to exclude the non uterine<sup>3</sup>

(22) The *Strīdhana* of a childless woman belonging to an inferior tribe, however, the daughter of a co wife<sup>4</sup> of a superior tribe takes  
Step-daughter though springing from a different mother

1 \* PAGE 102

On failure of her, her issue (shall succeed). Vide Manu<sup>6</sup> "What-  
10 "ever property of a woman may exist, such as had been in any  
"manner given to her by her father, let the daughter of a Brāhmanī  
"co wife take, or let it belong to her offspring" (23) The mention  
of a Brāhmanī includes by implication (the daughter belonging to) any  
superior class. Hence the daughter of a Kshatriy<sup>7</sup> co-wife takes the  
15 goods of a childless Vaisya co-wife

1 As has been laid down in the law regarding the property of a male & g  
See Yajñ II 114 p 991 I 10 supra

2—3 Colebrooke translates—whole blood. The expression in the text is *sadara*—belonging to the same uterus. The expression used by Vyāsanavara in this same passage is *Bhūnāśada*—which has been translated as non-uterine. Colebrooke translates as half-blood which is not sufficient (See note p 1098 supra).

4 This is in accordance with those provisions under which intermarriages among several *sarmas* appear to have been in force. See I dīkṣatālyā Ācharādhyāya Verses 57 (p 168) 58 p 236, 90 (p 241) and Vyavahāra Verse 12, p 1033

5 This word is derived as follows सप्र एक पतिवत्ता सा सपत्नी—She whose husband is equal i.e. the same (as the other) is a co wife. The form is based on the rule निय सप्त्यादिभु (Pāṇini IV 1 35) "In forming the feminine with the affix णी the word पति always takes the substitute व in the words like सपत्नी and the like & g तीवत्ता, वसपत्नी &c. Colebrooke translates as 'a rival wife'.

6 Ch IX 198 'Her offspring' or 'issue' (Colebrooke) *Apātṛya* (अपत्त्र) here refers to the daughters alone. See *Sarvājñā sārāyaṇa*. Most of the commentators on Manu agree that the property does not go to the brothers of the wife concerned. It goes in the first place to the daughter of a Brāhmanī wife, and in her absence to her offspring i.e. the female offspring.

7 This inference is contested by Śrīkṛṣṇa in his commentary on the *Dāya-Bhāga* of Jaimini-Pāṇini. Colebrooke

(24) On failure of sons, grandsons inherit their paternal grand-

Sons' sons mother's wealth For Gautama<sup>1</sup> says 'They, who  
"share the inheritance, must pay the debts" and

the grandsons are bound to discharge the debts of their paternal  
grand-mother, for the text<sup>2</sup> expresses 'Debts must be paid by sons  
"and sons' sons"

5

(25) On failure of grandsons also the husband and other relatives

Husband and others above mentioned<sup>3</sup> are successors to the wealth

### Vīramitrodaya

Thus by discussing the *śtrīdhana*, has been discussed the mother's  
property Of a woman who had no issue born, or of one all of whose  
sons and daughters are dead, there being an absence of motherhood,  
which is the counterpart of a living (child), who shall take the pro-  
perty? So the Author says

10

Yājñavalkya, Verses 144 (2) 145

15

*Aprajayām*, (when) 'without issue, i e without a living daughter  
and son or any of them, *atītayām*, (when) 'she passes away', *ta*, 'that  
i e, the *śtrīdhana*, *bāndhatāḥ*, 'the kinsmen, i e, her relations, *atāp*  
*nuyuh* 'shall get.

Here, moreover, this is the special rule in the case of a woman  
married according to the (four forms) *Brāhma*, *Datta*, *Āśvā* and *Prājā-*  
*patya*, the *śtrīdhana* of a childless woman goes to the husband In the  
case of the remaining four forms of marriages—by the use of the word *api*,  
'even, even when there is no marriage—her property goes to the father.  
If, however, she be offered in marriage and is devoid of a son or a  
daughter, then that property becomes of the daughters as their own.  
In their absence, moreover, the daughter's son, mentioned before by the  
word 'issue', becomes entitled to the property, as under the text of Manu

20

25

1 Ch XII 40 Cf Yajñ II 51 p 790 ante

2 See Yajñ II 50 p 792 l 7 Supra The two texts run thus

(1) The sons and grandsons should pay off the debts &c

(2) Those who take the inheritance must pay the debts From these

an inference follows that the sons and grandsons take the inheritance  
(See *Śrīdhana* p 77 ll 30 31 and *Balambhatta* p 260 ll 14-15) For such an  
inference however one more pramāṇa is wanting viz those who pay the debts,  
take the inheritance

3 i e in Yajñ II 144

the (conjunctive) particle *cha* can even be construed to have been used with reference to the person making the partition. As in the example, "Let Devadatta practise agriculture, and Yajñadatta also." (21) "Equally" is specified to forbid the allotment of deductions.

5 "Uterine" is used (with a view) to exclude the non-uterine.<sup>1</sup>

(22) The *Strīdhana* of a childless woman belonging to an inferior tribe, however, the daughter of a co-wife<sup>2</sup> of a superior tribe takes Step-daughter. though springing from a different mother.

11 \* PAGE 102.

10 On failure of her, her issue (shall succeed). Vide Mann: "What-  
ever property of a woman may exist, such as had been in any  
"manner given to her by her father, let the daughter of a Brāhmanī  
"co-wife take; or let it belong to her offspring." (23) The mention  
of a Brāhmanī includes by implication (the daughter belonging to) any  
superior class. Hence the daughter of a Kṣatriyā<sup>3</sup> co-wife takes the  
15 goods of a childless Vaiśyā co-wife.

1. As has been laid down in the law regarding the property of a male *i. g.* See Yājñ. II. 114 p. 994 l. 10 *supra*.

2—3. Colebrooke translates—whole blood. The expression in the text is *andara*-belonging to the same uterus. The expression used by Viṣṇuśekhara in this same passage is *Dhīnandara*—which has been translated as non-uterine. Colebrooke translates as half-blood which is not sufficient. (See note p. 1098 *supra*.)

4. This is in accordance with those provisions under which intermarriages among several *corpus* appear to have been in force. See Yājñavalkya Āchārādhyāya Verses 67 (p. 168); 88 p. 236; 90 (p. 241) and Vyavahāra Verse 125 p. 1033.

5. This word is derived as follows: सख्यः एकः पतिपत्न्यः सा सखी—She whose husband is equal *i. e.* the same (as the other) is a co-wife. The form is based on the rule *सिद्धं सख्यपत्न्यं* (Pāṇini IV. 1. 35): "In forming the feminine with the affix *सखी*, the word *पति* always takes the substitute *र* in the words like *सखी* and the like *i. g.* *सिद्धी*, *दुःखी* &c. Colebrooke translates as 'a rival wife.'

6. Ch. IX. 198. 'Her offspring' or 'issue' (Colebrooke). *Apatyā* (पत्यः) here refers to the daughters alone. See *Suryānārāyaṇa*. Most of the commentators on Manu agree that the property does not go to the brothers of the wife concerned. It goes in the first place to the daughter of a Brāhmanī wife, and in her absence to her offspring *i. e.* the female offspring.

7. This inference is contested by Śrīkṛṣṇa in his commentary on the *Dāya*. *Dāya* of Jimāta—Pāṇana. Colebrooke.

(24) On failure of sons, grandsons inherit their paternal-grand-  
mother's wealth. For Gautama<sup>1</sup> says: "They, who

Sons' sons

"share the inheritance, must pay the debts:" and

the grandsons are bound to discharge the debts of their paternal  
grand-mother; for the text<sup>2</sup> expresses: "Debts must be paid by sons  
"and sons' sons."

(25) On failure of grandsons also, the husband and other relatives  
Husband and others above mentioned<sup>3</sup> are successors to the wealth.

### Vāramitradaya

Thus by discussing the *stridhana*, has been discussed the mother's  
property. Of a woman who had no issue born, or of one all of whose  
sons and daughters are dead, there being an absence of motherhood,  
which is the counterpart of a living (child), who shall take the pro-  
perty? So the Author says:

Yājñavalkya, Verses 144 (2), 145

*Aprajāyām*, (when) 'without issue', i. e. without a living daughter  
and son or any of them, *atitāyām*, (when) 'she passes away', i. e., that  
i. e., the *stridhana*, *bāndhavadh*, 'the kinsmen', i. e., her relations, *adap-*  
*nuyah* 'shall get'.

Here, moreover, this is the special rule: in the case of a woman  
married according to the (four forms) *Brāhma*, *Dana*, *Ārsha* and *Prājā-*  
*palya*, the *stridhana* of a childless woman, goes to the husband. In the  
case of the remaining four forms of marriages—by the use of the word *api*,  
'even', even when there is no marriage—her property goes to the father.  
If, however, she be offered in marriage and is devoid of a son or a  
daughter, then that property becomes of the daughters as their own.  
In their absence, moreover, the daughter's son, mentioned before by the  
word 'issue', becomes entitled to the property, as under the text of *Manu*

1. Ch. XII. 40 Cf. Yājñ. II. 51 p. 795 ante.

2. See Yājñ. II. 50 p. 792 L. 7 *Supra*. The two texts run thus

(1) The sons and grandsons should pay off the debts &c.

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an inference follows that the sons and grandsons take the inheritance.  
(See *Sulabhi* p. 77 II. 20-21 and *Bhāṣmī* p. 260 II. 14-15). For such an  
inference, however, one more premise is wanting viz. those who pay the debts,  
take the inheritance

3. i. e. in Yājñ. II. 146.

stated above even when the daughter is living some portion is indicated for the daughter's son.

- Here in the case of the *Brāhma*, *Daiya*, *Āśvika* and *Prājāpatya* forms of marriages the property "which a woman dying without issue  
5 "leaves, that is intended for the husband only, by this text of Manu" it should be noted that in the case of a *Gandharva* marriage the share of the husband and the father is equal. (144, 145)

### Sūtapāni

#### Yājñavalkya, Verse 145

- 10 In the case of marriages like the *Brāhma* and the rest, the property of a childless woman, goes to the husband. If, however, there be daughters born of her, then (it goes) to them. In the case of the remaining *i.e.* the *Āśvika* and the other forms, it belongs to the mother and the father alone.

- The right of the mother's sister and the rest to the property in the  
15 absence of the husband and the rest, has been stated by Bṛhaspati.<sup>1</sup>  
"The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, father's sister, the mother-in-law, and the wife of an elder brother—all these have been declared to be like mothers. When of these  
"an *aurasa* son does not exist, or a daughter's son either, or their son also,  
20 "then the sister's son and the rest<sup>2</sup> shall take their property." (145)

(26) On the occasion<sup>3</sup> of treating of *Siridhana*, the Author adds something concerning a betrothed maiden.

#### Yājñavalkya, Verse 146 (1)

- He who after having given his daughter, takes her<sup>4</sup> (back), shall be  
25 punished<sup>5</sup> and should also (be compelled to) make good the expenses together with interest.

<sup>1</sup> Oh IX 126

<sup>2</sup> Oh XXV 88-89

<sup>3</sup> These words include other relations of the husband or father See 331. A 176 at p 127. These do not necessarily take in the order of enumeration, 'The question of priority is determined by the rule of propinquity—per Chandrasekh J in *Hanray vs Lak Meghala* 7 Bom L R 622/631, 73 I A 176. The Madras High Court has ruled that this text has no application to the right of succession to a maiden's property. *Sunderam vs Panasami* 43 Mad 32, at p 30

<sup>4</sup> i.e. as having a reference to the subject under discussion &c

<sup>5</sup> Colebrooke translates, "For detaining a damsel after affiancing her" &c *detra* = having given or affianced, and *haran* = 'taking back'.

<sup>6</sup> *Dandya*—i.e. is liable to a penalty, which may be in the form of a fine, imprisonment, or any other form of punishment. Colebrooke translates "should be fined"



(27) Mitāksharā —Kanyām datwâ, a damsel verbally, having given, apaharan one who takes her (back), shall be punished by the king, by regard to the amount of the property or the magnitude of the offence, and similar other circumstances. This, moreover, (is applicable) if there be no (sufficient) reason for the retraction. But, if there be good cause, he shall not be punished since retraction is authorized in such a case (by the text<sup>1</sup>). "A damsel, although given, one may even take back, if a better bridegroom presents himself"

(28) Whatever has been expended, on account of the espousal by the (intended) bridegroom for the gratification<sup>2</sup> of his own or the damsel's relations must be repaid in full, with interest, by the affiancer<sup>3</sup> to the bridegroom

(29) Should a damsel, anyhow<sup>4</sup> affianced, die before the completion of the (marriage) ceremony, what is to be done in that case? So the Author replies

Yājñavalkya, Verse 146 (2)

If she die (after troth plighted) the bridegroom should take back the gifts which he had presented, after deducting the expenses on both sides.

(30) Mitāksharā —If a betrothed damsel die, then, whatever had been previously given by the bridegroom such as a ring and similar other presents, the bridegroom shall take back parisedhyobhayavyayam, deducting the expenses on both sides, the expenses of both : e of himself and of the person who offered the bride, parisedhya, after deducting, : e taking<sup>5</sup> account of that, the balance (thus remaining) he may take

What, however, was given to the damsel by the maternal grandfather, or other relation,<sup>6</sup> such as the head ornament and other gifts,

1 Yājñavalkya I 166 p 184

2 Upachārārthan (उपचारार्थ) : e by way of offering hospitality to

3 : e the parent or guardian of the bride

4 : e either by proper religious rites, or by taking br hands, or in any other manner (See Balamibhāṣya p 270 l 16)

5 I gataṃ ya Balamibhāṣya considers this as a bad reading. He prefers Kigamaya 'removing' or 'discharging' (p 270 ll 19-20)

6 Such as the paternal uncle Balamibhāṣya.

as well as property inherited by her in her right of succession, (all that) her uterine brothers shall take. For Baudhāyana<sup>1</sup> says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them it shall belong to the mother; and in her absence, to the father."

### Viramitrodaya

On the occasion of (treating of) the stridhana, the Author mentions the disposal of property taken by the father and others for the marriage of a woman in the *Āsura* form who was promised by word of mouth

Yājñavalkya, Verse 146

*Kanyā*, 'a maiden', having by a word of mouth, *datvā*, 'promised to give', *haran*, 'one taking her back' i. e. does not give to him, such a one *daṇḍyaḥ*, 'should be punished' by the King, by regard to the amount (invested) and other circumstances. *Vyayam*, 'expenses', i. e., the amount of money spent by the bridegroom for the purpose of the marriage. *Sodayam*, 'together with interest', *dadyit* 'should give.'

The person giving the promise by word in the case of the death of the maiden under a misfortune, after having corrected for the expenses of both i. e., of oneself and of the bride's father and others, such a one i. e. the bridegroom may take back what was given by himself such as clothes, ornaments, gold etc., not however interest. By mentioning correction, it has been pointed out that where there is an absence of an excess over what was spent by the bride's father, nothing should be taken. By the use of the word *cha*, 'also', is intended the simultaneity of the expenses, gift, and the penalty. (146).

1. Appendix B. 7 p 125 (Leipzig Edition 1884)

"This is a special solitary text which has necessarily to be supplemented by other texts such as those quoted in *Dīyākrama* (D K B II 1-2), or from the general law of *Stridhana*, and where this law also fails, from the still more general law of succession (*Mitākṣharā* II 11-19-25) The special rules of *Stridhana* succession have thus to be expressly or impliedly supplemented from *Paithinasi* or *Nārada* (*Viramitrodaya* 241)" per Jenkins O J in *Gandhi Magazine* vs *Das Jadao* 24 Bom 102 at pp 211-212 (T B.) See also the observations of Chandavarkar J. in *Janglabar vs Jetha Appaji* 32 Bom. 400 at pp. 411-412.

Sūtapāni

Yājñavalkya, Verse 146

He who by a word of mouth, *Kanyāṁ dātā*, after 'having given his daughter,' *haran* 'takes her back,' without a cause, becomes *dandya* 'liable to be punished'

5

Whatever had been given by the bridegroom such as gold etc., that the father of the bride shall pay back with interest

When a maiden who by a word of mouth has been promised to be given, whatever was respectfully given by way of customary presents to the relations of the father and the relations of the bridegroom, after deducting both these whatever may remain as the residue of the *Sulka*, all that, the bridegroom may take (146)

10

(31) It has been declared, that the property of a woman dying without issue, goes to her husband. The Author now shows that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and even though she have issue

15

Yājñavalkya, Verse 147

A husband is not liable<sup>1</sup> to make good the property of his wife (when it was) taken<sup>2</sup> by him in a famine, or for (the performance of) a religious duty, or during illness, or while under restraint

20

(32) Mitākṣharā — *Durbhikṣe in a famine*, for the maintenance and preservation of the family *Dharmakārye for a religious duty*, which must necessarily be performed, and also *vyādhu during illness* or *samprahrodhake, while under restraint* or confinement in prison or under corporal penalties, being destitute of other funds, and therefore taking his wife's property, *bhartā na [punar] dātumarhati the husband is not liable to repay*. But if he seize in any other manner, he must pay

25

(33) With the exception of the husband, the property of a woman must not be taken in her life time by any other kinsman or heir since

1 See Dalambhatti (p 276 l 29) There is no obligatory rule of the law that he must necessarily pay (back). Otherwise it would have been said "he should not pay" अन्वयेनैव विदुः नान्यथा । अन्वयेनैव विदुः ।

2 ॐ II 148 Taking means taking and using. Therefore, when property is not used, it should be returned. *Samasāra* vs *Thayaramani* 50 Mad. 911

punishment is denounced<sup>1</sup> (against such conduct) " Their kinsmen,  
" who take their goods in their life-time, a virtuous king should chastise  
" by inflicting the punishment of theft " Similarly, it is pronounced  
an offence " Such ornaments, as are worn by women during the  
5 " life time of their husband the heirs of the husband shall not divide  
" among themselves, they who do so are degraded from their tribe "

#### Vīramitrodaya

The heir to the *stridhana* of a deceased woman has been discussed  
before The Author mentions who may take her property during  
10 ( her ) life time

#### Yājñavalkya Verse 147

*Sampratirodhake*, 'while under restraint', such as when he is under  
imprisonment or the like By the use of the word *cha*, 'and', is added  
the general qualitative condition viz when the husband's property does  
15 not exist The rest is easily intelligible (147)

#### Sūlapāni

#### Yājñavalkya, Verse 147

*Sampratirodhake* 'while under restraint,' the meaning is (what was  
taken by one of a higher varṇa causing obstruction for meals etc (147)

#### 20 PAGE 103\*

(34) A present made on her husband's marriage to another wife  
has been mentioned as a kind of *Stridhana*. The Author describes  
such a present

#### Yājñavalkya, Verse 148

25 To a superseded wife, let him give an equal sum for the supersession;  
(1 e) to her to whom no (*Stridhana*) separate property has been given, but  
if any have been assigned, let him allot a half

1 Balambhatta ascribes this text to *Nārada* but it is not found in the  
published edition of that writer by Dr Jolly The text is found however, in  
*Manu* at Ch VIII 29 See the observations of Medhatithi on this verse The  
*Chauradanda* (चौरदण्ड) or "punishment of theft" referred to here has been given  
later on by *Manu* at Ch VIII 334

2 *Dasha*—a dereliction, a transgression *Manu* Ch IX 200

3 दशसुवर्ग is a better reading, the reading दशद्विंश adopted in the print is  
not good Balambhatta characterises it as a bad reading (दुष्ट) and rightly  
That would necessarily require it to be in the neuter gender

(35) Mitākṣharā:—She over<sup>1</sup> the marriage of whom (another) marriage is contracted is a *superseded*, *adhivinnā*. Such a one who is a wife is a 'superseded wife'. To her *adhivinnastriyai*, i. e. to a *superseded wife*, *ādhivedanikam*, for the supersession, i. e. on account of the supersession. An amount *samam*, equal, to what is expended on the second marriage; to such an extent, should be given; *yasyai strīdhanam na dātam*, to her (i. e.) to whom no separate property has been given, by her husband or by her father-in-law. But if *dāte*, any *strīdhana* had been assigned, *ardham*, half, the sum expended on the second marriage should be given. Here, however, the word 'half' (*ardha*) does not intend an<sup>2</sup> exact moiety. So much therefore should be paid as will make the wealth already conferred on her equal to the prescribed amount of compensation. Such is the meaning.

Viramitrodaya

The Author expounds the *Ādhivedanika strīdhanam* mentioned before

Yājñavalkya, Verse 148

*Adhivinnā*, 'superseded', i. e., a woman over whom a co-wife has been brought in, to such a one *Ādhivedanikam*, 'pertaining to supersession', i. e., on account of marriage with a co-wife, *dhanam*, 'wealth, equal to the property given to the one who is being married, should be given to the (former) wife to whom *strīdhanam* had not been given. If, however, *strīdhanam* had been already given before, then half of the property given to the (new) wife who is being taken in marriage, has been declared to be given to the superseded wife. (148).

1. *Adhivinnā* is derived from *Adhi* i. e. over, and *vinnā* i. e. married (from *vid* 'to marry') अविन्नं अविन्नं. The compound is formed after the rule in Pāṇini V 2 127 —'स्य सुप्र' Money which was obtained on account of the *Ādhivedana* or 'Supersession', is the *Ādhivedanika* under the rule अयं नान्विद्य (Pāṇini V. I 38)

2. The word *Artha* (half) is used here in the masculine number and therefore not necessarily equivalent to half, it signifies a portion in general. See *Amara* I 3 16 *Subodham* p. 78. See also *Bālaubhāṣā* p. 271 II 19-21, where *Bālaubhāṣā* has established that in whichever gender the word be taken, it indicates a portion, rather i. e. a complement of the amount already received to make a half, and not a half exactly.

## Śūlapāṇi

## Yājñavalkya, Verse 148

- To a wife for whom a co-wife has been brought, on account of the supersession an equal amount should be given. The meaning is, that as much as is given as a respectful gift to the new wife after her marriage, so much (should be given). If *Śitdhama* had been given, then a half should be given. (148)

[ Colebrooke Sec. XII. ]

[ On the evidence of a partition ].

- (1) Having thus explained the law of distribution of the heritage, the Author next propounds the evidence by which it may be proved in a case of doubt

## Yājñavalkya, Verse 149

- When partition is denied, the fact of the partition may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof, or by (proof of) separate possession of houses or fields.

- (2) *Mitākṣharā*:—If a partition be denied or disputed ( then ) *vibhāga-bhāvanā*, the fact of the partition, i. e. the certainty of the partition may be obtained by the testimony of *jñātībhiḥ*, kinsmen, i. e. of the *Pitrbandhus*, *Mātrbandhus* such as the maternal uncle and the like; *sākṣībhiḥ*, witnesses viz. possessing the qualifications ( of witnesses ) as mentioned before,<sup>1</sup> or by the evidence of a writing, e. g. a record of partition. It may also be ascertained by *yautakāḥ*, separate, i. e. partitioned houses and fields

- (3) The practice of agriculture or other business pursued apart from the rest, and the observance of the five<sup>2</sup> principal daily

1 Yājñ II 68-69 p 846 *supra*

2 अथवापराधविषयानुष्ठानम्—see *Manu* III 70, 71

अथवापराधविषयानुष्ठानम् । हेमो देवो प्रतिभोतो स्वयमेव निधियुक्तम्

A unilateral declaration or communication is enough *Guradas vs Sadashie* 18. Bom. L. R. 620 Thus when a notice containing the intention was despatched on the 4th August, but it reached the addressee on the 9th August, the declarant's death on the 5th August did not affect severance *Nyayati Narayana Rao vs Mudhanappa Purushottam Rao* (1938) Mad. p 315, or *Ging a sut. Dattatraya vs Prabhakar* 39 Bom. L. R. 94.

performances and other religious duties performed separately from them, are pronounced by Narada<sup>1</sup> to be tokens of a partition<sup>2</sup>  
“Among un-separated brothers the performance of religious duties is single. When a partition has been made indeed the (performance of) religious duties also becomes separate for each one of them.”

5

(4) Similarly, other signs of previous separation are specified by the same Author<sup>3</sup> “Brothers who are divided may perform the acts of giving evidence, of becoming a surety, bestowing and taking gifts, but never those who are not separated.”

Thus ends the Chapter on the Distribution of Heritage

Here also ends the translation of the portion of the Mitākshara by Mr. Colebrooke

(Contd. from last page)

Separation among brothers raises no presumption of a separation between one of the brothers and his sons. *Mt Mendra Auer vs Mirbunja Bhat S. 1913 3 Ind. 270*

An entry in the Record of rights showing the shares of each member is evidence of severance. *Amarago Auer vs Durahin Paut 40 Bom. L. R. 738 (P. C.)*

*Memo profits* one cannot recover past mere profits. 38 Mad. 50

1. Narada Ch. XIII 37

2. Colebrooke reads one more verse from Narada viz. No. 36 Cl. 13 : : the one immediately preceding No. 37. It mentions additional facts proving partition. It reads thus

विभाजनमप्युदे क्षतकलं विविक्तम् । एतन्ममभवेत्तदेव दूताभ्यवर्तनम् ॥ ३६ ॥

Tr. “If a question arises (among co-heirs) in regard to the fact of a partition it must be ascertained by the evidence of kinsmen, by the record of the distribution or by separate transaction of affairs. *Alāpalekhya* एतन्मम is a document evidencing partition. This is one of the kinds of written evidence referred to in *Alāpalekhya* एतन्मम in Yajñ. II 149 above.

*Alāpalekhya* gives another reading viz. एतन्मम *Alāpalekhya* “by occupancy and by writing or by a writing evidencing possession.”

3. Narada Ch. XIII 39

## Vīramitrodaya

Thus having discussed distribution, the Author mentions the determining factors when there is a doubt about it

## Yājñavalkya, Verse 149

5 "A partition has not taken place between us, when in this way a partition is denied, the determination of the separation : *i. e.* prior partition should be ascertained : *i. e.* determined by the Chief Judge or the  
 \* kṛko, by the evidence of kinsmen, born in the father's family, of cognate  
 10 kindreds, : *i. e.* relations other than these, by the evidence of witnesses of the qualifications stated before, and by other evidence as would be helpful in establishing the desired point, such as documents of partition of houses, lands, partition : *i. e.* which had become the exclusive property like the *yautaka*

By the use of the word *cha*, 'and', are included the signs of a partition stated by Nārada, 112 : "Those whose income and expenditure of  
 15 "wealth is separate, and who mutually lend at interest to each other, "those also who exchange merchandise, these are separated, and no "doubt, and also of the Ordeal (149)

20 Thus ends the Chapter on Dāyavibhāga in the commentary on Yājñavalkya

## Sūlapāṇi

## Yājñavalkya Verse 149

When a partition is denied, the partition should be established by the kindred by the (proof of) separated houses and lands. So Nārada  
 25 "Those whose receipts and expenditure are separate and who mutually "lend at interest to each other, and who carry on business transactions "separately, these are certainly separated, there can be no doubt" (149)

Here ends the Chapter on Partition



In reference to a boundary as described above, six varieties of

disputes are likely to arise as says Kātyāyana<sup>1</sup>

Six fold disputes: 'Excess or deficiency as to a part, existence, or

'absolute non existence (of the right itself), possession without previous

5 "possession by any other, and a boundary, are the six causes (that lead)

"to a dispute regarding land" For example, in a claim by some one

to the effect "My land here is more than five nivartanas<sup>2</sup>", an

answer to the effect, "It is only five nivartanas and nothing more"

it would be a dispute 'regarding excess' Where in an assertion by a

10 party that his land was five nivartanas, the answer is, 'it is not so, it is

"indeed less than that", it would be a dispute 'regarding a deficiency'

In an assertion by a party that his share in the land measured five

nivartanas, a reply that he had no share at all, would constitute a

dispute 'regarding the existence or absolute non existence' Where

15 in a suit, the plaintiff asserts "This is my land and is in my possession

'without any one being in prior occupation", and the defendant denies it,

and says that his possession was indeed long and continuous, that would

give rise to a dispute where 'possession without previous possession'

is the point to be determined When there is a dispute whether this is

20 the boundary limit or *that*, it is a dispute 'regarding boundary'. In

this way a dispute of this kind is likely to be of six varieties Although

the sixfold dispute be regarding land, still as the boundary also is deter-

mined either under an express or implied text, (the consideration of)

that has been incorporated in the chapter on 'Boundary disputes'

25 Those who belong to the neighbourhood are neighbours, Sāmantāḥ,

and those, belonging to different contiguous villages on the four sides,

are residents on each (point) of the boundaries For a text of

Kātyāyana declares that "A town is the neighbour of a town, a field

is said to be the neighbour of a field, a house has been indicated to be

30 "that of a house on account of its being situated in the neighbourhood"

By the words 'a town &c', are indicated persons residing therein e g

in the expression 'the town was routed' The use of 'neighbours' is

also indicative by implication, of those contiguous to them Kātyāyana

also has said "Those who are closely contiguous are called neighbours,

35 "so also are those who are contiguous to these, and those who are

"contiguous to the contiguous resembling a lotus in their formation."

**Śthavirāḥ**, *the elders*, i.e. *old men*. By using the word 'others' *Ādayah*, are included the *Mandas* and *Uddhrtas*. The definition of 'old men' and others has been given by the Same Author thus "Those who have witnessed anything being brought about, are considered as old men being endowed with the qualities of them, quite apart whether they are actually aged or no

"Those who lived before as neighbours and afterwards migrated to another region, are called by the sages the, 'natives' or *Mandas* of the place, as they had their (domicile of) origin in that place

"Those, moreover, who, since they bring out a fact of old, as being borne out by tradition, by any act of peaceable possession and by special episodes relating to it are known as the *Uddhrtas* or the 'antiquarians'

**Gopāḥ**, *herdsmen*, i.e. those who tend the kine *Śimakṛshāṇah*, *cultivators on the boundary*, i.e. tillers of the fields lying contiguous to the boundary. Serve *cha vanagocharāḥ*, and all persons moving in the forests, i.e. the foresters such as huntsmen &c. These, moreover, have been mentioned by Manu<sup>1</sup> viz: "Hunters, fowlers, herdsmen fisher-men, root diggers, snake-catchers, gleaners and other foresters"

**Śthalam**, *a mound*, a raised portion of ground *angīrāḥ*, *char coal*, the refuse of fire, *tushāḥ*, *chaffs*, the coating of corns, *drumāḥ*, *trees*, like the (Indian), fig<sup>2</sup> tree, *setuḥ* *a water-embankment*, of a dam to a flow of water, *chatya*, *a heap of stone*, i.e. an embankment of stone or any other material. By the use of the word *Ādya*, 'any others', are included bamboos and &c.

These,<sup>3</sup> moreover, are of two classes according as they are visible, or not visible. *Vide Manu<sup>4</sup>* "Let him mark the boundaries (by) trees such as the *Nyagrodhas*<sup>5</sup>, *Asvatthas*, *kimsukas*, cotton trees *Salas*, *Palmyra* palms and trees with milky juice (246). By clustering shrubs and bamboos<sup>6</sup> of different kinds, *Samas*, creepers and raised

1 Ch VIII 260

2 *Ficus Indica*

3 i.e. the boundaries

4 Ch VIII 246-248

5 *Nyagrodha* *Ficus Indica* *Asvattha*—*Ficus Religiosa* *Kimsuka*—*Jutea Fraxinea* *Eala Eshola Robusta* "Trees with milky juice", i.e. *Arka*—*Calotropis Gigantea*, *Udumbara* *Ficus Glomerata* &c. *Sama*—*Acacia Sama*6 *Nelan blatta* notices also another reading viz. *huyyila-gulma* *Nanda pandita* reads *hulyaka*

"mounds, reeds and thickets of the *knbyaka*<sup>1</sup> so that the boundary  
 "(mark) will not vanish (247) Tanks, drinking reservoirs, wells,  
 "and fountains should be built on boundary junctions, as also temples,  
 "(248)" These are visible (marks)

- 5 "Having<sup>1</sup> seen that through men's ignorance of the boundaries  
 "trespasses constantly occur in the world, let him (i.e. the king) cause  
 "to be made other marks of boundaries which remain hidden (249)  
 "Stones, bones, cow's hair, chaff, ashes, potsherds, dry cowdung,  
 "bricks, cinders, pebbles, and sand (250) And whatever other things  
 10 "of a similar kind the earth does not corrode (even) after a long  
 "time these he should cause to be buried as invisible signs where  
 "boundaries join (251) By these signs the king shall ascertain the  
 "boundary (of the lands) of two disputing parties" These are  
 (boundaries) with their marks hidden

PAON 10c\*

- 15 By means of these visible and invisible marks pointed out by the  
 neighbours and others, the king should determine the boundary of  
 the two disputing litigants

#### Viramitrodaya

- Now the Author states the method of the delimitation of the  
 20 boundary

#### Yājñavalkya, Verses 150, 151

- In a dispute regarding the boundary between two villages, the  
 neighbours and those others stated before marked i.e. identified by  
 means of mounds, char-coals &c should determine i.e. fix, the boundary.  
 25 Kātyāyana states the characteristics of neighbours thus "A town is the  
 "neighbour of a town, a field has been declared to be that of a field, a  
 "house has been pointed out to be that of a house on account of its being  
 "situated in the neighbourhood That village which by its encircling  
 i.e., surrounding, is situated on the four quarters is the neighbour of  
 30 that village The meaning is that in this manner also is of the land,  
 house, etc (to be taken) By the word *grāma*, 'town', are spoken of  
 the people residing there, *sthavardhā*, 'elders', i.e., old men By the word  
*ādī*, 'and others', are included the *manas*, *uddhrtas* and others

The characteristics of *vṛddhas* &c have been mentioned by Kātyāyana thus : "Those by whom was seen the transaction, men possessing these qualifications, whether they are old or not old are declared as *vṛddhas*. Those, who were formerly residents at the place, and afterwards had gone to another region, these as they originally belonged to that place, are called *maulas* by the sages. Those, who, marked with the characteristics of knowing (the boundary) from hearsay, possession, transaction, tradition, ( help to ) bring out the decision, are therefore known as *uddhṛiddh*."

*Gopāh*, 'cowherds', those who tend the line *Śimā-Kṛṣṇandh*, 'cultivators on the boundary' : *ε*, cultivators of the field on the boundary, *sarve vanachārinas*, 'all persons moving in the forest', *ε*, the hunters, fowlers, the forest guards and the like. By the use of the word *cha*, 'also', twice are included fishermen, gleaners and the like, as also root-diggers, snake-catchers and the rest. So also *Manu* : "Hunters, fowlers, herds-  
men, fishermen, root-diggers, snake-catchers, gleaners and other  
'foresters'."

*Śihāṅgāro*, 'the hard charcoal' : *ε*, the remnant of the wood from the fire. *Śihāṅgāra* is the tending in some places. In that case it should be explained as *śihālam*, 'a mound meaning a raised portion of the ground'. *Tuṣṭh*, 'chaff', *ε*, the coating of corn, *drumdh*, 'trees', such as the *Plākṣha* or the like trees, *śatubh*, 'embankment', *śalmikāh*, 'the nut lull, an elevated place well known in the Central Provinces, as *Dvā ubhundu śīṇ rāṣi*, *nimnam*, 'slopes', such as pits, etc., *asthi*, 'bones, are well known, *śatubh*, a monumental village tree. By the word *adya*, are included pebbles, etc. That has been stated by *Manu* : "Stones, bones, cow's hair, chaff, ashes, potsherds, dry cowdung, bricks, cinders, pebbles and sand (250). And whatever other things of a similar kind the earth does not corrode (even) after a long time these should cause to be burned as invisible signs where boundaries join  
251 (150-151)."

## Sūlapānt

Yājñavalkya Verses 150-151

In a dispute about the boundary of a field the *Śimā* is the local inhabitants, *vṛddhāh* 'the old'. By the use of the word *ah* 'and like others', the hunters etc., are meant. By visible signs such as immovables etc. hidden marks, such as charcoal etc. the marked boundary they should determine (150-151).

When, however, the marks do not exist, or being in existence are ambiguous by reason of the non-determination of any mark thereof, the Author lays down, a rule for deciding the dispute

### Yājñavalkya, Verse 152

- 5 Men of the neighbouring villages, or of the same village, being in number either four, eight, or even ten, having put on garlands of red flowers, and red dresses, and taking some of the earth, shall determine the boundary.

- 10 Mitākṣharā—Sāmantāḥ, men of the neighbouring villages, i. e. as has been described before<sup>1</sup>. Samagrāmāśchatwāroṣṭhaṇ daśāpi wā, or of the same village being in number four, eight, or even ten, thus being of an even number and belonging to the neighbouring villages;<sup>2</sup> putting on chaplets of red flowers, and clad in red garments, and with lumps of earth placed on their foreheads, shall determine—i. e. point out—the boundary.

- 15 The alternative suggested in the expression Sāmantā wā "men of the neighbouring villages or", has a reference to the witnesses mentioned in other Smṛtis. For Manu<sup>3</sup> has said: "The settlement of a dispute regarding boundaries shall depend on witnesses." Here therefore the decision by (means of) the witnesses is the chief course. Failing that, by the Sāmantas. So it has been laid down by Manu<sup>4</sup>: "In  
20 "the absence of witnesses, men from the four neighbouring villages, "who are pure, shall make a decision concerning the boundary, in the "presence of the king". Failing these, the neighbours of these shall decide, as says Kātyāyana: "When the men from the neighbouring "villages are (suspected to be) corrupt on account of personal interests,  
25 "undoubtedly the decision must be obtained from men of the other "neighbouring villages, regard being had to the importance of the "interests at stake. When even such neighbours of the neighbours are "found to be faulty, it has been laid down that the neighbours of these "should be selected, but the king, knowing well the law, should never  
30 "engage men who are vitiated."

1 : : on page 1149

<sup>2</sup> Samagrāmāḥ—Both Mandlik and Borrodale translate Samagrāmāḥ as "of the village in which the disputed land is situate". The expression simply means "of the same village", and may be interpreted as has been done by the two eminent writers named above, or may be taken as adjectival of and qualifying the Sāmantas, as has been done by Bālabhāṭṭa (see p. 275 l. 18). Aparārka notes a different reading altogether as: "सामन्ता वा समा ग्रामा &c."

3 Ch VIII 303

4 Ch VIII 238

the witnesses, the neighbours &c. thus . "When a piece of ground has  
 "been carried off by a stream and<sup>1</sup> thus the boundary marks have been  
 "uprooted or destroyed, (they shall fix the boundary) according to the  
 'inference to be drawn from (an inspection of) the spot, and according  
 5 "to the measurements, and according to the traces of possession"<sup>2</sup> &  
 they should determine (the boundary), by noting in those boundary  
 regions where a down flowing river has carried off or washed away  
 the marks and which have thus either been uprooted from their places,  
 or been destroyed (altogether) There, (the expression) 'according to  
 10 the inference to be drawn from the spot' means according to the  
 inference as to the old spot, the marks whereof have either been up  
 rooted or annihilated 'According to measurements,' e.g. 'The field lies  
 on the west of this village measuring 1000 rods commencing from the  
 village', and the like, or according to the evidence of long and immemo  
 15 rial possession within the knowledge of and adversely to the opponent.  
 PAGE 106"

A special rule has moreover, been laid down by Brhaspati<sup>3</sup> in this  
 connection "Those persons will be proper witnesses in disputes of  
 1 'this nature who know the origin of the title the evidence regarding  
 "it, the duration of possession, the name and also the character of the  
 20 "(particular) piece of ground"

These witnesses Samantas and others, moreover, being sworn  
 according to the oaths of each, should be questioned by the king in the  
 presence of Kulas<sup>4</sup> &c As says Manu<sup>4</sup> "The witnesses (giving evidence)  
 'regarding a boundary, shall be examined concerning the land marks  
 25 'in the presence of the Kulas of the village, and also of the two  
 "litigants' The witnesses &c thus examined should give a unanimous  
 decision of all together regarding the boundary

The boundary thus determined by these, together with all the  
 marks pointed out by them, with the names of witnesses &c specified,  
 30 should be noted on a document that it may not be forgotten It has

1 Dr Jolly interprets अग्रे, अग्रे and अग्रे as separate results following from  
 the actions of separate agents and translates thus "or abandoned (by the owner)  
 or the boundary marks have been destroyed &c—" 2 Ch XIX 14

3 See Yājñavalkya II 39 & the Mitākshara thereon pp 746 747 &c, above

4 Ch VIII 234

also been said by Manu<sup>1</sup> "As they, being examined, declare the marks  
"of the boundaries (to be) even so the king shall justly cause them all  
"to be fixed between each village<sup>2</sup>"

If within an interval of three fortnights from the day of the  
making of (a decision regarding) the boundary, no calamity either from 5  
the king or God fall on these, i.e. the witnesses, *Sāmantas* and others,  
then a proof of that would establish the decision as to the boundary  
This interval about the calamity from God or king has been laid down  
by Kātyāyana "In decisions regarding a boundary, in the case of the  
"ordeals by *Kora*, and of the touching of the (holy) feet, the interval 10  
"for (the visitation of) a calamity from God or king is respectively  
"three fortnights a fortnight, and seven days"

### **Vīramitrodaya**

When, however, the aforeslated marks do not exist, or are ambi-  
guous by reason of their being or not being (regarded as) marks, then 15  
the Author states the means for a decision

### **Yājñavalkya, Verse 153**

*Sāmantah*, 'men of the neighbouring villages, as have been des-  
cribed before, *samagramdh*, 'men of the same village', i.e., of the  
immediately adjoining villages, *chaivāroshtau dasa va*, 'four, eight, or 20  
ten', who themselves are sure of the boundary, with red flowers and  
clothes on, and with clods of earth placed on their heads, *simam*  
*mayeyuh*, 'should determine the boundary, i.e., should definitely fix'  
The adverbs *api*, *va*, 'also', 'or', are indicative of option In the  
expression 'or the *sāmantas*, the word 'or' intends witnesses, as says 25  
Manu<sup>3</sup> "In the determination of a boundary, the testimony of wit-  
'nesses (may be availed of) Similarly<sup>4</sup> "In the absence of witnesses,  
'four men from the four neighbouring villages, shall make a decision  
"concerning a boundary in the presence of the King Kātyāyana also  
(same as p 1154 ff 23-30 above) Similarly, in regard to witnesses, 30  
the same author says "In the absence of the *sāmantas*, the *maulas*,  
" *vidhrtas* and like others Manu<sup>5</sup> "Placing earth on their heads"

1 Ch VIII 261

2 मृत्—this is a better reading than मृत्त which would read when translated  
"and fixed by mounds"

3 Ch VIII 244

4 Ch VIII 209

5 Ch VIII 207

“wearing chappels of flowers, and putting on red dresses, being each  
“sworn by his meritorious deeds, let them settle (the boundary) in  
“accordance with the truth

After the determination in this manner, if any calamity owing to  
5 the act of the King or of God does not occur to the *sāmantas* and the rest,  
then the boundary determined by them should be (finally) fixed by the  
King, vide this text of Kātyāyana “In the matter of the settlement of  
“a boundary, in the orders by the *loka*, as also by the touching of the  
“feet, (the occurrence of) a calamity from the King or God within three  
10 “fortnights, one fortnight, or seven days (respectively) is regarded’ (152).

### Sūtapāni

#### Yājñavalkya, Verse 152

If there be doubt as to the marks themselves then the inhabitants of  
the neighbouring villages, four, eight, or ten even in number with red  
15 flowers on heads and clad in red robes, affirmed in the oaths stated  
before, placing clods of earth on their head, should determine the  
boundary (152)

When, however, of those who gave evidence as witnesses, any  
disease &c is noticed within the interval of three fortnights, or when  
20 their evidence conflicts with the testimony of witnesses other than  
those cited by the defendant, and who are entitled to more weight by  
their qualifications and number, then those (former) deserve to be  
punished for their false evidence The Author states the rule as to that

#### Yājñavalkya, Verse 153 (1)

25 In case of a falsehood, they should severally be punished by the king  
under the muddling amercement

Mitākshara —*And, in case of a falsehood* i.e. for telling a lie which  
was the basis of the decision, all the *Sāmantas* shall each be punished  
30 *madhyamasāhasena*, with the muddling amercement,<sup>1</sup> i.e. with a fine of five  
hundred and twenty four panas<sup>2</sup> That this penal provision refers to

1 There are three grades of *sahasas*, *सहस्र*, *असहस्र* and *उसहस्र*, see Narada

2 *अण* is a coin either of copper or of gold The ordinary *Pana* is equal  
in value to 80 cowries &c about 3 or 4 pias



the *Sāmantas* is inferable from the fact that a separate provision of punishment has been made in other Smṛtis for the witnesses, *Maulas* &c. For says Manu<sup>1</sup>: "If they determine (the boundary) in the manner stated, they are guiltless (being) veracious witnesses; but if they determine it unjustly, they shall be compelled to pay a fine of two hundred (paras)". Nārada<sup>2</sup> also having laid down the middling amercement for the *Sāmantas* in: "Should, however, the neighbours speak falsely when called upon to decide a question of this sort, they shall all be punished severally by the king, each having to pay the fine of the middling amercement," has prescribed a punishment of the first degree for the neighbours of these: "Should the rest of those engaged in a dispute regarding land tell a lie, these are (considered as) sinners, and shall be punished with a fine of the first amercement." The same punishment has also been laid down for the *Maulas*, Elders &c: "The *Maulas*, the Elders and the rest shall also each be severally punished with a penalty; they shall have to pay the fine of the first degree, if they make false statements". By the use of the expression *Ādi*, 'and the rest', are included, the cowherds, bird-catchers, hunters, and other inhabitants of the forest. Although, by reason of their being engaged in a sinful avocation, the use of the bird-catchers &c. is made only in pointing out the marks, and not in the actual determination of the boundary itself, still the imposition of a penalty is proper, as it is likely that a false statement may be made even in the pointing out of the mark or sign.

The rule as to punishment laid down in: "In the case of a falsehood, they should be severally punished," has a reference to (statements made through) ignorance, since Kātyāyana has laid down a separate punishment for those who do so by design thus: "If, of those many assembled together, all do not declare a decision either through fear or out of avarice, they shall be punished with the highest amercement." Similarly, the same punishment has been prescribed by the Same Author in case where there is a discrepancy among the witnesses: "If there be a discrepancy among those examined, they shall be punished with the highest amercement."

1. Ch. VIII 257

2. Ch. XI 7.

3. By Nārada Ch. XI 8.

Having thus punished the witnesses &c. for speaking falsehood through ignorance or other cause, a fresh proceeding should be commenced for determining the boundary: For the same Sage having observed: "After having punished in the case of a statement without knowledge, the (question as to the) boundary should again be investigated", has laid down the procedure for determining the boundary thus: "Having excluded such of the neighbours as are (found to be) faulty, he should select others, and joining them together with the *Mauḍas* &c., the king should have the boundary determined; this is (the rule) known to those who are conversant with law."

#### Viramitrodaya

When, however, within the interval of three fortnights, a disease etc. is seen, then a punishment should be inflicted on them, so says the Author

#### 15 Yājñavalkya, Verse 153 (1)

*Anṛte*, 'in the case of a falsehood' i. e., if they (are found to have) told a lie, for that reason, *te*, 'these', i. e., the *sāmantas* and the rest should each be punished with twenty-five *panas*, the penalty for the middling amercement.

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20 When, however, the *Sāmantas* and others conversant (with the locality) or the marks do not exist, how should a decision be made? So the Author says

#### Yājñavalkya, Verses 153 (2)

25 In the absence of persons knowing, or of marks, the king should determine the boundary

Mitākṣharā:—In the absence of persons knowing, such as the *Sāmantas* and others, and also of marks, such as trees &c. *rājā simnah pravartitā*, the king himself shall determine the boundary, i. e. shall cause it to be determined. The causal is here understood. The land, the subject-matter of dispute, lying between two villages, should be divided equally, and should be assigned to the two litigants, after specifying thus: "this is the land of this man", "this land is to go to

Śūlapāṇi

Yājñavalkya, Verse 153

15 If a false declaration be made, they should be punished by the king, each separately, with the middling amercement. In the absence of marks for identification, the king should himself make the boundary. (153)

With a view to demonstrate that this text is founded on justice, even though there is no room for supposing that it is not so, the Author mentions an extension<sup>1</sup> of the rule (stated in the last two verses)

Yājñavalkya, Verse 154

10 The same rule should be understood (to apply) in (the case of) a garden, a ware-house, a village, a watering-place, a pleasure-garden, a house, a rain-watercourse and the like.

Mitākṣharā:—Ārāmaḥ, a garden, a piece of ground intended for growing and gathering flowers and fruits. Āyatanam, a ware-house, 15 i. e. a house, or a plot of ground set apart for storing husk or straw. Grāmaḥ, a village, is well-known. The use of the word village, moreover, is indicative of a town, by implication. Nipānam, a watering place, i. e. a drinking place, such as a well, a pond and the like. Udyānam, a pleasure-garden, i. e. a pleasure bower. Veśma, a house, i. e. a dwelling 20 place. In (the case of) these i. e. the garden &c., this very vidhi, rule, i. e. as characterised by the (rule about) sāmāntas, witnesses &c., should be known (to apply). Similarly (should be the rule) in the case of water-courses arising from excessive rain-fall i. e. in disputes of a kind where it is alleged that "the course of water flows by the 25 middle (line) of these two houses or those two". By the use of the term *Ādi*, 'and the like', the same old rule should be known to apply in the case of mansions also. For Kātyāyana also says: "And also in "the case of a field, a well, a tank, and even a meadow, or a garden; "a house, a mansion, a resting place, the abode of a king and the 30 "temple of god."

1. An अतिरिक्त is an extension or an extended application of a rule to things not directly covered by the rule itself. For an explanation of this passage see Bālabhatṭa, pp. 277 and 278. and note 5 on p. 282.

## Vṛamitrodaya

With an eye to brevity in the treatise, the Author extends the afore-stated law to another subject

## Yājñavalkya Verse 154

*Arāmaḥ*, 'a garden', i.e. a pleasure garden, *dyānaṁ*, 'a warehouse', a piece of land set apart as for stocking husk, straw, etc., *grāmaḥ*, 'a village', is also indicative of a town by implication, *nīpānaṁ*, 'a watering place, such as a well, a reservoir, etc.', *udānaṁ*, 'a pleasure bower', i.e. a piece of land set apart for sport, *śaśma*, 'a house', i.e. a dwelling place, *cārahambupravāha*, 'a rain water-course', i.e. a channel of water produced by the monsoon showers for these, *cāha* etc., 'thus same', i.e. as stated in regard to the boundary, is *vidhikā*, 'rule', i.e. the method of determination. By the word *ādi*, 'and others', are included a field, door, etc.

Brhaspati<sup>1</sup> "From since the time of its foundation, a house, a pool, a shop or the like, whatever has been occupied by a man in whichever manner and upto whatever period, that must not be disturbed from him" (24) "Windows, water courses, as also a projecting balcony, a channel for the outward flow of water from a quadrangle, constructed before, must not be removed" (25) *Prandhī*, 'a water course', *niryāha* *tedhī*, 'a projecting balcony', a balcony made of elephant tusks, *chāśisidāṁ*, 'a quadrangle', a house with four doors, *syandamādī*, 'channel for water', i.e. a portion of the floor, known as *osarī* शीर्ष *Kātyāyana*<sup>2</sup> "One should not let rain-water drop, nor construct a gutter in another's house" Brhaspati<sup>3</sup>. "A privy, a fire place, a pit, a receptacle for leavings of food and other (rubbish) must never be made very close to the house of another person Similarly" "A passage through which men and animals go to and fro unprevented is called *śamśarand*, and must never be obstructed by any one" *Kātyāyana*<sup>4</sup> "One should construct a ring<sup>5</sup> for discharging ordure, urine and filthy water, a fire place and a pit after leaving a space of a couple of cubits from the wall of another" *Chakram*, 'ring', for oil etc. Similarly<sup>6</sup> "Of trees springing up in the midst of the boundaries of two fields, the fruits and the flowers produced therefrom should be made over to the owners of the fields i.e. to the owners of the two fields Of the trees which have sprung up in one man's field, where the branches become embedded in another's field, that one should be regarded as the owner of these in whose field they have become embedded, these i.e. the branches" (154)

1 Ch XIX 24 25

2 विशुद्धिद्वारा Dr Jolly translates 'a peg projecting from a wall (used to hang them on)

3 चतुर्दिशे वा द्वाभ्यां गच्छन्ति वा चतुर्दिशे—Dr Jolly Tr 'a square of four buildings and a channel for the exit of water' 'must not be blocked'

4 Verse 753

5 छिन्न—another reading is छिन्न—'a window commanding a view'

6 Ch XIX 26

7 Brhaspati Ch XIX 27

8 Verse 164 9 चतुर्—another reading is चतु—'a mound' 10 Verse 762-763

## Śūlapāṇi

## Yājñavalkya, Verse 154

- As to these 1 = the gardens etc this same rule 1 = as characterised  
by the Sumanāś witnesses etc should be understood By the word *ach* are  
5 included fields etc (154)

Having stated (the rule regarding) the decision of a boundary,  
the Author states, in that connection, the punishment for destroying  
the boundary marks and the like (acts)

## Yājñavalkya, Verse 155

- 10 For breaking up the boundary, for encroaching beyond the boundary,  
likewise, and for usurping the lands the punishments are the lowest<sup>1</sup>, the  
highest, and the middlemost (respectively)

- Mitākṣharā —The common (plot of) land separating many fields is  
a *maryādā*, boundary, for breaking that up with force, *simābikramane*, for  
15 *encroaching beyond the boundary*, 1 = for encroaching  
Penalties for break- beyond the boundary and ploughing and also  
ing a boundary &c for usurping a land by a show of fear &c, the  
punishments respectively, of the lowest, the highest and the middlemost  
Sāhasas should be understood The use of the word 'land' (*śhetra*)  
20 here is intended to include by implication, a house, a garden &c

- When, however, he usurps land &c under a mistaken notion of (the  
same) being his, then a fine of two hundred (*panas*) should be understood  
As says Manu <sup>2</sup> "He who by intimidation usurps a house, a tank, a  
" garden or a field shall be fined five hundred (*panas*) (if he does so)  
25 " through ignorance, (the fine shall be) two hundred (*panas*) ' Having  
regard to the magnitude of the land or the property usurped, even the  
highest amercement may sometimes be prescribed And it is for this  
that it has been said<sup>3</sup> ' Corporal punishment, confiscation of the entire  
' property banishment from the town, and branding, as well as ampu-  
30 " tation of that limb (with which the crime was committed) is declared  
" to be the punishment for a *Sāhasa* of the highest degree "

1 See Narada Ch XIV for a detailed description of *Sāhasas* or offences

2 Ch VIII 261

3 By Narada XIV 8 The edition of Narada by Dr Jolly reads one more  
line before the two quoted by Vajrasena It runs thus:

उन्ने नमनं दण्ड भयमात्र दण्डे

Tr For *sāhasa* of the highest degree a fine of not less than a thousand  
(*panas*) is ordained

## Viramītrodaya

On the occasion (of discussing) the boundaries, while mentioning the penalty for a transgression thereof, the Author states the same penalty in another connection also with a view to brevity of the treatise

## Yājñavalkya Verse 155

The common plot of land disconnecting the fields, etc is *maryadda*, 'the boundary' For a forcible breaking of that and for transgressing the boundary and beyond that by tilling etc usurping the land of another by a show of fear, etc, the punishments of the lowest, highest, and the middlemost ameracements should respectively be administered. By the use of the word *tathā*, 'likewise', immediately connected with the word 'land' are included the houses, gardens, etc By the word *tu* 'however', is excluded the breaking up of a visible mark (155)

## Sūtapāni

## Yājñavalkya Verse 155

For the breaking up of a boundary i e for transgressing a boundary, for taking away land, respectively the punishments are the middling and the highest ameracements (155)

Moreover, when after obtaining the permission of the owner of the field either by request or by payment of money a man wishes to erect a dam for water, or sink a well and if the owner of the field obstructs him the owner himself is punishable So the Author says

## Yājñavalkya Verse 156

An embankment, however producing benefit should not be prohibited, where the injury is slight, (as also) a well which occupies but little space, but has abundance of water, which deprives another of his land

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Mitaksharâ —Setub, an *embankment*, i e the construction of a dam to a waterflow should not be stopped by the owner of the field, even though it *deprives*, i e destroys another's land, provided that it causes little injury and is productive of much benefit (to many) A well, moreover as it occupies a small portion of land causes little injury, and is beneficial on account of the abundance of water (in it), (so it) should never be stopped The use of the word well, moreover, is indicative by implication of a small well, a water pond and the like others From this it necessarily follows that when, however, it occupies the whole field and thus causes much injury, or being in a field in the vicinity of a

river or similar other water place is productive of very little benefit, it may be stopped. The two fold character of an embankment has been mentioned by Nārada<sup>1</sup>. There are two sorts of dykes (or water courses), one called *theya* (i.e. one which may be dug into the ground), and another called *bandhya* (i.e. one which may be built up). It is called a *theya*<sup>2</sup> when it lets (out) water to flow, and it is called *bandhya* when it stops water from flowing."

When, however any one wishes to repair a dyke prepared by another and destroyed by delapidation or any like cause, then he should do so only after asking the permission of the former owner or his descendant, or of the king. As says Nārada<sup>3</sup>. If a man were to put in repair a dyke erected long ago but decayed, without asking the permission of the owner, he shall not have the (use and) profits of it (20). "When, however the owner is dead, and also all his human progeny he may ask the (permission of the) king and may set the dyke in order (21).

#### Vīramitrodaya

The Author mentions an exception to the fine stated for usurping a field

#### Yājñavalkya Verse 156

If to the owner of a field the injury be slight if such an embankment i.e. dam is productive of great benefit to others then the constructor of the embankment should not be prohibited i.e. stopped, by the owner of the field. The clause which deprives another of his land is connected to both. In a small field a well with abundant water should not be prohibited. By the use of the word *tu* 'however', is excluded an embankment which would cause injury to many on account of its injuring the whole field (156).

#### Sulapani

#### Yājñavalkya Verse 156

If in another's field an embankment which is being constructed by another be useful for many and cause slight injury to the owner of the field then such a one should not be prohibited similarly a well also (156).

1 Ch XI 18

2 See Nārada Ch XI 19. Where the necessity of both these kinds is explained viz. too much water destroys a crop and therefore it is to be let out (*theya*), so also too little causes the crop to wither and so also water has to be stored (*bandhya*). See Bājambhatti p. 278

3 Ch XI 20 21

river or similar other water-place, is productive of very little benefit, it may be stopped. The two-fold character of an embankment has been mentioned by Nārada<sup>1</sup> "There are two sorts of dykes (or water-courses), "one called *khaya* (i.e. one which may be dug into the ground), and  
5 "another called *bandhya* (i.e. one which may be built up). It is "called a *khaya*<sup>2</sup> when it lets (out) water to flow; and it is called "*bandhya* when it stops water from flowing".

When, however, any one wishes to repair a dyke prepared by another and destroyed by delapidation or any like cause, then he  
10 should do so only after asking the permission of the former owner or his descendant, or of the king. As says Nārada<sup>1</sup> "If a man were to put in "repair a dyke erected long ago but decayed, without asking the permis-  
"sion of the owner, he shall not have the (use and) profits of it (20).  
15 "When, however the owner is dead, and also all his human progeny, "he may ask the (permission of the) king and may set the dyke in "order (21)".

#### Vīramitrodaya

The Author mentions an exception to the fine stated for usurping  
a field

#### Yājñavalkya, Verse 156

If to the owner of a field the injury be slight, if such an embank-  
ment i.e., dam is productive of great benefit to others, then the con-  
structor of the embankment should not be prohibited i.e. stopped, by the  
owner of the field. The clause "which deprives another of his land"  
20 is connected to both. In a small field a well with abundant water  
should not be prohibited. By the use of the word *tu*, 'however', is  
excluded an embankment which would cause injury to many on  
account of its injuring the whole field (156).

#### Sūtapāni

#### Yājñavalkya Verse 156

If in another's field, an embankment which is being constructed by  
another be useful for many, and cause slight injury to the owner of  
the field then such a one should not be prohibited, similarly a well  
30 also (156).

<sup>1</sup> Ch XI 18

<sup>2</sup> See Nārada Ch XI 19. Where the necessity of both these kinds is explained viz. too much water destroys a crop and therefore it is to be let out (*khaya*), so also too little causes the crop to wither and so also water has to be stored (*bandhya*). See Balaśubhata p. 378.

<sup>3</sup> Ch XI 20-21



The rule as to the owner of the soil has been laid down (in the last verse). Now the Author mentions a rule regarding one who constructs a dyke



## Yājñavalkya, Verse 157

If a man construct a dyke in a field without even informing the owner (of the field), the right to the produce is that of the owner, and in his absence, that of the king.

Mitākṣharā :—Without asking the permission of the owner of the field, or in his absence, of the king, he who *parakṣhetre selum pravartayati*, constructs a dyke in another's field, (that man<sup>1</sup>) will not be entitled to enjoy the produce. But in the produce reared therein, the right of enjoyment is that of the owner of the field, or in his absence, that of the king. Therefore the purport is, that the permission of the owner must be obtained either by request or by payment of consideration, and in his absence, of the king, and then a dyke should be set up.

## Vīramitrodaya

One desiring to construct an embankment or a well in another's land should obtain the permission of the owner of the field by a request or by money-payment, or when that is not possible, should obtain the permission of the king, and then should be construct it. Intending this, the Author proceeds

## Yājñavalkya, Verse 157

As regards the crop produced from it, when there is abundance of harvest, the (right of) enjoyment will be of the owner of the land, and not of the one who erects; when, however, the owner does not exist, then the (right of) enjoyment of the produce goes to the king. The word *eva*, 'even,' goes with the word 'owner,' thereby the constructor of the embankment is excluded (157).

## Śūtapāṇi

## Yājñavalkya, Verse 157

Without informing the owner of the field, if any one constructs an embankment, (then) after the embankment is completed, the owner of the field has the right to the enjoyment of the embankment. In his absence (the right is) of the king (157)

It has been said that the owner of a field should not obstruct the construction of a dyke. Now, the Author mentions another rule which has a close bearing in the same context.

**Yājñavalkya, Verse 158**

5 He who does not cultivate himself, or through another, a field, even when it was broken by the ploughshare, should be made to pay the produce obtainable from the land and the field should be got cultivated by another.

*Mitākṣharā*—He, however, who having undertaken in the presence of the owner of the field "I shall cultivate this field", afterwards gives  
10 it up, nor gets it cultivated by another, then, even when that field *phālābatam*, was broken by the ploughshare, &c. was dug up a little by the plough, and therefore was not properly prepared for the production of a good crop, still of the land so dug up, the produce &c. such as was likely to be produced from it is determined by the neighbours &c.  
15 should be made to be paid by that cultivator, and the field also should be taken away from the former cultivator and should be got cultivated by another.

Here ends the chapter on Boundary Disputes.

**Vīramitrodaya**

20 On the occasion of the (discussion about) the field, the Author says  
**Yājñavalkya, Verse 158**

'I will tell this land thus having undertaken with the owner of the land, one who afterwards does not cultivate himself, nor cause it to be cultivated by another when it was furrowed with the plough, such  
25 a one should be compelled to pay as much as may be determined by the *Sāmantas* or others as the likely yield of the land. And the land also should be taken away from him and should be got cultivated by another (158)

30 Thus ends in the Commentary called *Vīramitrodaya*  
on the Yājñavalkya Smṛiti on the Chapter Boundary Disputes

**Sūlapāni**

**Yājñavalkya, Verse 158**

In some places the reading is *halahatam*, 'broken by the plough'

35 A field even though broken by the ploughshare, after accepting it, if one does not perform the sowing operation nor does he either cause it (to be performed) such a one should be made to pay, even as from the uncultivated field the quantity as may have been produced if cultivated, and it should be got cultivated by another (158)

Thus ends the Chapter on Boundary Disputes.

## CHAPTER X

Of disputes between the Owners of cattle  
and their Herdsmen<sup>1</sup>

The several titles of *Vyavahāra* are not related to each other as cause, or the thing containing the cause, and therefore, no particular order of enumeration was intended in the text<sup>2</sup>, 'Of these the first is "payment and recovery of debts &c" Therefore by inverting the order (of enumeration) the Author now states the rules regarding disputes between the owners of cattle and their herdsmen

## Yājñavalkya, Verse 159

A female buffalo doing damage to the crop shall be fined eight *māśhas*, a cow, half of that, and a goat or a sheep, half of that  
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**Mitākṣharā** —A female buffalo causing damage to a stranger's crop shall be fined eight *māśhas*, a cow, half of that, i.e. four *māśhas*. Goats, as also sheep shall be fined two *māśhas*. Since the female buffalo and the rest are incapable of owning wealth, the person who owns these is intended. A *māśha*, moreover, is here intended to signify the twentieth part of a copper *pana*. For, Nārada<sup>3</sup> has stated "A *māśha* is considered as the twentieth part of a *pana*."

This rule, moreover, applies where the trespass has been without the knowledge (of the owner). When, however, the trespass is by design, the rule laid down in another *Smṛiti* should be observed viz: "Two quarters of a *pana* for a cow, and double that for a female buffalo; similarly, for a goat, a sheep and calves, a quarter has been laid down as the fine." What, however, has been laid down by Nārada<sup>4</sup> 'For (a trespass by) a cow, he should inflict a fine of one *māśha*, for (a mischief by) a female buffalo, two *māśhas*, and in the case of a goat, a sheep and calves, the fine shall amount to half a *māśha*," has a reference to crop which had ripened into sprouts, and which has been eaten up leaving only the roots

1 See Digest Book III Ch IV pp 81-101

2 Manu Ch VIII 47 referred to above sec 1 616 ll 15-25, see also

Yājñ 1 369-371 and commentaries

3 App 68

4 Ch XI 31

## Vāṁśirodāya

## Yājñavalkya Verse 159

- The she buffalo should be fined eight *māśhas*. A cow destroying the crops should be fined half of that i.e. four *māśhas*. The goat and the sheep when the crops are damaged should be fined two *māśhas*, thus the connection of words is in the inverse order. Here, as the she-buffalo etc. are devoid of money, the fine is impossible (to be recovered), and therefore their owners should be (held liable). *Māśha*, moreover, here is the silver one, stated before and equal to two silver coins, should be taken, vide the text of the Bhāṣyakāra. "In matters of fine the calculation of the amount is to be made by golden *māśhas*, in case of trespass by the beasts on crops, however, by other, i.e. the silver *māśhas*. *Paṇa* means the *kuṣṭhāṇa*, a quarter of that i.e. the fourth part. According to Rāṇākara "In the case of goats etc. the quarter should be the penalty when the crops are eaten at night. "For a cow, a *māśha* should be ordered as the fine to be paid, so, for a she-buffalo two *māśhas*, and for the goats, sheep and calves, the fine shall be half a *māśha*. This text of Nārada<sup>1</sup> is applicable when the residue of the roots fit to be developed into sprouts had been eaten (159)

## Śūlapāṇṭ

## Yājñavalkya, Verse 159

- Māśha* here is the twentieth part of a *paṇa*. By the words she-buffalo etc. are expressed their keepers. For the destruction of crops on account of the she buffalos the keeper shall be fined eight *Māśhas* on account of a cow, four on account of a goat or a ram, two each (159)

The Author mentions a double fine in certain circumstances having regard to the magnitude of the injury

## Yājñavalkya, Verse 160 (1)

- For cattle eating and lying in the field the fine is double of that mentioned (above)

Mitākṣarā —If the cattle after eating the crop in another's field (are allowed) also (to) sleep there unwarded, then *yathoktat dwiguṇa*

dando, a fine double that mentioned above should be understood. Of cattle eating and lying with their calves, moreover, a fine four times that mentioned above should be understood, vide the text: "Of those resting (there) a double fine has been laid down, and of those accompanied by their calves, a four fold (fine)"

Vīramitrodaya

Yājñavalkya Verse 160 (1)

When after eating the crop in another's land, and being fully satiated, (are allowed to) rest down there without being warded off, then the she-buffalo and the like should be fined with double the amount of that stated before. For those with their calves and resting down, the fine should be imposed four times of that stated before, vide the text 'Of those resting (there), a double fine has been laid down, and of those accompanied by their calves, a four-fold (fine) 160 (1)

The Author mentions an extended application of this rule in regard to other fields and cattle

Yājñavalkya, Verse 160 (2)

The fine for these is equal as in the case of lands where grass or fuel is stored, and the fine for an ass or a camel is the same as for a female buffalo.

Mitāksharā — Vivatah : e the portion of land where grass and fuel are stored in abundance, and which is enclosed and guarded. In the case of a trespass upon that also, samam dandam, a fine equal, to that in the case of other fields should be understood in the case of these, eśhām, : e of the female buffalo and the like

The asses and the camel (joined together make the compound expression), an ass or a camel, kharoshtram, that should be regarded as the same as for a female buffalo. Wherever and by whichever penalty a female buffalo is punished, in those places and by a similar penalty shall the ass and the camel be each severally punished. In the matter of obstructing the (growth of the) crop the ass and the camel are each equal to a female buffalo, and the fine also has been prescribed according to the extent of the injury, and thus in the compound expression Kharoshtram the conjunct compound is not intended.

**Vīramitrodaya**

**Yājñavalkya, Verse 160 (2)**

*Paṭṭam*, land with profuse quantity of grass intended as a pasture ground for the cows and other cattle and guarded by another. There, for the she buffalos and other grass eating beasts, on these a fine *samam*, 'equal,' i.e. equal to the kind, to as much as was consumed of the crop, should be laid. An ass and a camel make up the compound expression 'ass and camel' *Pharoshtram*, that *mahugh-samam*, 'equal to a she buffalo,' i.e. as much fine is laid for a she buffalo for the destruction of a particular quantity of crop, so much fine shall be for the ass and the camel also. This is the meaning [160 (2)]

**Sūlapāni**

**Yājñavalkya, Verse 160**

After consuming and being seated at their pleasure, the penalty to be inflicted should be double of that stated above. Of these i.e. of the she buffalos and others in regard to the pasture land the punishment shall be the same. By the word *paṭṭa*, pasture ground, is meant the portion of land preserved for grass etc. For the destruction of the crops etc. by asses and camels, the punishment should be the same as for a she buffalo (160)

For destroying the crop of another, a fine has been laid down for the owner of a cow (&c). Now the Author states the rule according to which he should also be made to pay (the value of) the crop to the owner of the field.

**Yājñavalkya, Verse 161**

As much crop as may be destroyed so much grain shall be paid to the owner of the field, the herdsman shall be chastised but the owner of the cattle incurs the fine already mentioned (before)

*Mitāksharā*—*Sasya* crop, is used to denote generally the produce of fields. *Yāval*, as much, straw, grain or the like, as is destroyed by cows or other cattle in a particular field *tāval kshetrāphalam* so much produce of the field, shall *swāmi*, the owner, of these be compelled to pay to the owner of the field i.e. according to the valuation determined by the *Sāmantas* in this form "From such land, the produce would be so much"

Gopastu, *but the herdsman*, shall only be beaten, he shall not be compelled to pay for the produce. The chastising of the herdsman, accompanied by the pecuniary fine above mentioned, must be understood to apply in the case of an injury to the crop by the fault of the keeper, *vile the text* "If a cow straying through the fault of the keeper, do damage to the crops, no penalty is in that case exacted from the owners (of the cattle), the herdsman (alone) is punishable (for the damage done)"

Again, the owner of the cattle incurs only the fine already mentioned, and not a corporal punishment, if the crop is damaged on account of his own fault. But in every case the produce must be made good by the owner of the cattle alone, inasmuch as he participates in the produce of the field by means of the milk obtained from female buffaloes and the like, fed and fattened on the produce of the field

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The produce, such as straw &c, remaining after the quantity consumed by the cows and the like, should be taken by the owner of the cattle alone. Since he has purchased it as it were, by paying the price adjudged by the arbitrators. And so *Narada*<sup>2</sup> (observes) "When a man claims back the Crop consumed by cattle, that quantity of grain should be given to him (by the owner of the cattle) which would have been produced<sup>3</sup> from the field in the estimation of the *Sīmantas*. The chaff shall be paid to the owner of the cattle, and the corn to the cultivator<sup>4</sup>"

#### Viramitrodaya

On a destruction of crops not only is he to be punished, but he must be compelled to render the produce to the owner of the field, so says the Author

#### Yājñavalkya Verse 161

Yatāt sayam, 'as much crop, as may be destroyed on account of being eaten by the she buffalo and the like, the value of so much produce

1 Of Narada Ch XI 30

2 Ch XI 38-39

3 वापित्वा from वा 'to sow,' as also 'to reap.' The latter meaning better suits the context and therefore has been selected. See Balambhatta p 280

4 Balambhatta adds "i. e. the owner of the field is not to get anything."

Digest Vol II p 109

as may be reasonable should the owner of the field be getting from the owner of the she buffalo etc This is the meaning By the use of the word *tu*, 'however', the Author discriminates the produce of the crop of that portion of the field which has been left out of the damaged part

a The cowherd, however, is to be chastised only, and should not pay the produce of the field, for the reason, it appears, that the owner enjoys the result of the consumption of the crop in the form of milk etc Chastisement, moreover, is an extension of the aforesaid penalty. vide the text<sup>1</sup> 'If a cow straying through the fault of the keeper, do

10 "damage to the crop, no penalty in such a case should be imposed upon "the owner, the keeper deserves the punishment Gomi, 'the owner of the cow'. This is only an indication The owner of she buffalos etc. also incurs the penalty as stated before By the word *tu*, 'however', the Author discriminates chastisement ( 161 )

15 Sūlapāṇi

Yājñavalkya, Verse 161

As much of the crop as is destroyed on account of the trespass by the she buffalo etc. so much only as may be determined by the *sāmantas* etc shall the cultivator obtain from the cowherd When that is not possible

20 the cowherd should be chastised while the owner of the cows incurs the penalty as stated before Uśanāh mentions an offence for demanding the grain eaten by the cow If a man demands back the corn eaten by 'the cows his ancestors will not eat that food nor will the heavenly "divinities consume it ( 161 )

25 The Author mentions an exception in the case of particular fields  
Yājñavalkya, Verse 162

There would be no trespass if without any intention ( on the part of the owner ) the cattle stray by a road, or in a field in the neighbourhood of the village store But in the case of a wilful trespass he deserves punishment like

30 a thief

Mīlāksharā — *Path by a road*, i. e. adjoining the village In a field situated in the neighbourhood of the village store if the crop is consumed by the cattle without any design on the part of the owner there would be no fault either of the herdsman or of the owner The statement

35 as to the absence of any guilt, is made with a view to indicate the absence



of any punishment as well as to prohibit the payment of the value of the crop

*Kāmachāre in the case of a wilful trespass, i e if the cattle are designedly made to stray, chauravat, like a thief, i e that punishment which is meted out for a thief, such a punishment arhati, he deserves*

This rule moreover is with reference to an open<sup>1</sup> field Since absence of punishment has been stated by Manu<sup>2</sup> in reference to an unenclosed field Where (the field containing) a crop is unenclosed, and if cattle destroy it the king shall not in such a case inflict a "punishment upon the keepers of cattle" If however, it is enclosed, then a trespass does occur even in (reference to) a field on the roadside &c The same Sage has laid down the preparing of a hedge<sup>3</sup> thus "He (i e the owner of the field) shall make there a hedge over which a camel cannot peep and stop every gap through which a 'dog or a boar can thrust his head'

### Sūtipāni

#### Yājñavalkya Verse 162

*Patha* in the way i e in the vicinity of the village pasture grounds *Kashire* in the field i e without (any) intention (on the part) of the keeper etc when the crop is consumed by the she buffaloes etc there is no fault of the keeper etc

For purposely (causing) the eating however the penalty would be as aforesaid (162)

The Author states another rule where there would be no penalty even in the case of particular beasts

#### Yājñavalkya, Verse 163

A big bull beasts let loose beasts recently delivered straggling beasts and like other beasts over whom there is no keeper, and beasts distressed<sup>4</sup> by (the acts of) God or the king should be set free

1 अगस्त्य i e Unenclosed

2 Ch VIII 238

3 Manu Ch VIII 238

4 Colahrooke interprets शृङ्खलित as the cause of the disturbance by the beasts and translates 'For they are impelled by God and the king

Mitāksharā—A bull and (one which is) a big one is a 'big bull', mahoksha, १ c, sprinkler<sup>2</sup> of seed 'Utshtapasavaḥ beasts let loose, १ c let loose in honour of a deity according to the rites for consecrating bulls or the like. Sutikā, a least recently delivered १ c within ten days of their calving. Āgantukāḥ, straggling beasts, १ c, wandering away from its own herd, and coming from another (part of the) country. These should be mochyāḥ set free, should not be fined even when another's crop is consumed. Also those over whom there is no keeper, even these daivarājapariplutāḥ, being distressed by (the acts of) God and the King, १ c being overpowered by God and the King, shall not be punished by the owner of the field wherein the crop has been damaged.

By the use of the term *ādī*, 'and like others', are comprehended also the elephants, horses, and the like. These, moreover, are mentioned by Uśanas<sup>3</sup>. "The (owners of the) elephants and horses shall not be fined, for they are looked upon as the protectors<sup>3</sup> of (king's) subjects, so (also) are not punishable beasts with one eye, or hump-lacked beasts, as also those which have been once branded. So is unpunishable a stray cow, or a cow which has (recently) calved or which is unmanageable. So also are the cows exempt from punishment in times of festivity, or on an anniversary day."

Here, in the case of beasts which are let loose and so are without any owner, there is no possibility of a punishment, and the above have been referred to as illustrative, १ c as consecrated beasts cannot be punished, so a big bull and the like (should be left unpunished).

#### Viramītrodaya

The Author states the penalty etc in special cases of fields, and animals.

#### Yājñavalkya, Verses 162, 163

On the way, in the fields adjoining the village pasture grounds when crops are eaten by a cow etc., the fault is of the owner of the cow, even if it was without the wish of the cowherd. The fault of the cowherd

1 A bull specially reared for impregnation.

2 Cf also Yājñavalkya Ch XI 32.

3 *Upasādhya* adds *अपराधिनो राजा* *अपराधिनो देवता* *अपराधिनो ब्रह्मणा* *अपराधिनो*

moreover, does not come in for a penalty. When, however, the cows etc are deliberately made to graze, the attendant at the grazing deserves punishment like a thief. Thus absence of a fault, moreover, is to be observed where the field is uncovered and the eating thereof has been for a short period, *vide* the text of Manu<sup>1</sup>. "Where the crop is unenclosed, and 5  
"if the cattle destroy it, the King shall not, in such a case, inflict a punishment upon the keepers of cattle and also *vide* the text of Vishnu<sup>2</sup>:  
"On the road at the end of the village pasture ground, there is no fault,  
"except during the harvest time.

*Mahakṣho*, 'a big bull, i.e. a sprinkling bull, *utsrakṣāpasava*, 'abandoned animals, such as at the exequal rite of dedication of a bull and the like, dedicated animals such as, a bull, a heifer and the like, *antikā*, 'recently delivered, one who has not come out of the tenth day after delivery, *agantukah* 'strugglers, such as detached from their own herds and coming from another region only. By the word *ādi*, 'and others, are 15  
included "unpunishable are the elephants and the horses, for they are declared as protectors of the subjects stated in this text of Another Smṛiti *Mokṣya*, 'should be set free i.e. should not be punished. Such of the cows etc whose keepers are immersed in calamities due to the act of King or God, these should be let off as helpless. In the case of those 20  
that are dedicated, no punishment is possible as there is no owner, and it should be understood that their mention is only by way of giving an illustration. By the word *tu*, 'however, are excluded from being released all others than those mentioned (162-163).

## Śūlapāni

## Yājñavalkya, Verse 163

The great bull such as intended for the God a bull dedicated after being branded and marked with a disc. A recently delivered cow is one which has not completed ten days after delivery and stray ones also. By the word *ādi* 'another like are to be taken those mentioned in the text<sup>3</sup>. Unpunishable are the elephants and horses for they have been 30  
declared as the protectors of the subjects so also are not punishable beasts with one eye or humpbacked beasts as also those bulls which have been branded with a discmark. Of these those for whom there is no watchman should be let off. The herdsman should be punished, this is the meaning. Similarly those destroyed by the fate or by theft (163) 35

1 Ch VIII 238

2 Ch V 146

3 Of Uśanaś &amp; Naraḍa see p 1176 note 2

The rules as to the owner of a cow have been stated, now the Author prescribes (a rule) for the herdsman

### Yājñavalkya, Verse 164

Let the herdsman restore the cattle every evening in the same condition in which they were entrusted (to him) For such as have perished or vanished through (his) fault, he should be compelled to pay if he had stipulated for his wages

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- Mitrākṣharā —As the cattle were made over in the morning by counting by the owner of them, in the same manner should the herdsman, in the evening time, restore the beasts to the owner after counting (thereof) For cattle perishing or vanishing *pramādena* through fault, i. e. through his fault, a herdsman who *kṛtaveśanah* has stipulated for his wages &c whose wages have been fixed should be made to compensate the owner The (rule for the) determination of wages has been stated by Nārada "The annual wages of a herdsman for a hundred head of cattle shall be a heifer for two hundred a cow, and the milk (of the whole herd) every eighth day" The loss by negligence has moreover been clearly explained by Manu<sup>1</sup> For a beast which has been lost, or destroyed by worms, or killed by dogs or (has died) by falling into a pit, and if no proper efforts are made the herdsman alone shall be made to pay He shall not be made to pay for those which have been forcibly taken away by robbers As says Manu<sup>2</sup> 'But for an animal forcibly taken away by robbers the herdsman shall not be made to pay provided he informed the owner at a proper time and place Of those, moreover which have perished by (the acts of) God or the King the ear &c should be exhibited *vide* the text of Manu<sup>3</sup> 'If cattle die let him carry to his master their ears & limbs, tails, bladders, tendons and the yellow concrete bile and let him point their particular marks'

In the condition in which in the morning the cattle may have been made over by the owner to the herdsman as without any scar or any other fault, in the same condition in the evening must the cowherd deliver them back. For such as may have died or been lost through (his) mistake, the cowherd should be made to pay, provided wages had been stipulated for him (164) 5

## Yājñavalkya, Verse 165

On the loss of a beast by the fault of the herdsman the fine ordained for him is thirteen <sup>1</sup> *panas* and a half, and he shall pay <sup>2</sup> the money to the owner 10

Mitaksbarā — Moreover, when, on account of the fault of the keeper, an animal is killed, the keeper should be ordered to pay a fine of thirteen *panas* and a half, and to the owner an amount equal to the value of the beast, as determined by arbitrators. This verse laying down the measure of the fine has not been mentioned by any one before 15

## Viramitrodaya

On what occasion, for the trespass by animals is the owner punishable, and on what occasion moreover is the keeper? To such an inquiry intending an answer, that for an offence during the night time, the owner, and for that during the day time, the watchman (etc. is responsible) the Author states in regard to the watchman 20

## Yājñavalkya Verses 164-165

*Yatha*, 'in the condition, without any scars etc., and identically of the particular number, the cattle as by the owner may have been made over in the morning to the watchman, those the cowherd should return over in the evening. During the day time, for those which may have died owing to his mistake or may have vanished owing to (their) being taken away, he should be made to pay by regard to the price, if wages had been stipulated &c. fixed for him. Even for those taken away by robbers, etc. when their restoration has been found to be impossible, their price &c. the amount of money also has been laid down &c. has been declared to be given. 25 30

1 Mr. Mandlik reads twelve instead of thirteen अत्रवर्षात्तत्र. This expression has both interpreted as 12½ see note 1 on p. 1160 below

2 Mr. Mandlik translates thus and he should restore the thing (i.e. the animal) to the owner. Apparently the word *pana* in the text of Yājñavalkya has been rendered as 'the thing' & 'the animal'. This, however, would not suit the context as the rule laid down in this verse is applicable when the beast is lost

- If the cattle die or are taken away by robbers through his fault, for the watchman of the beasts, the fine is thirteen *panas*<sup>1</sup> less by a half i.e. twelve *panas* and a half more, has been ordained to be taken by the King himself. By the use of the first *cha*, are included those which have fallen, others than dogs. By the use of the word *tu*, however, the Author excludes the punishment for the herdsman who reports a forcible taking away by robbers, tiger, and the like. That has been declared by Manu and Nārada<sup>2</sup>. "But for an animal forcibly taken away by robbers, the herdsman shall not be made to pay, provided he informed the owner at a proper time and place. Brihaspati also. "When he does not restore nor complain and report to the owner, "the herdsman is responsible for the fault, and is also liable for a fine "(to be paid) to the King. By the second use of *cha*, the Author removes the doubt about any rule of option owing to a simultaneity of punishments (164-165)

### Sûlapāni

#### Yājñavalkya Verse 165

- When the beast is lost through the fault of the keeper, the fine is half by thirteen *panas* ordained for the keeper. To the owner, however, a money payment, and when the payment of money referred to in the text "if the beasts have died or been lost through mistake etc., is impossible this text is for the payment of the price (165)

- While speaking of the cattle (generally), the Author speaks about a pasture-ground for cattle

#### Yājñavalkya, Verse 166

- By the choice of the village, or by the authority of the king, a portion of land for the pasture ground for cattle (should be kept). The twice-born may always take from any place grass, fuel, and flowers like his own.

*Mitāksharā* — *Grāmechchbayā*, by the choice of the village, i.e. by the choice of the inhabitants of the village regard being had to the large or small extent of the land, or by the King's will, a cattle pasture

1 The *Varmitodaya* interprets अपवसादशरण as अवहितवसादशरण अवाधिकत्वादशरण i.e. सप्तदशदशरण taking it as an उत्तरवदशरी कम्पधारय relying upon the *Yātūla* विस्मयवृत्तिरस्य सप्तदशदशरण उभयवत् उभयवत् शरणम्. The author of the *Mitāksharā* takes it as अपाधिकवदशरण. In regard to this the editor of the Chowkhambā series says, in Note 4 on p. 653-ननु स अद्वयवत्तु कथाऽप्यवहितं मद्रासाद्यनारक्ष-वृत्तयानादुपपन्नम्।  
2. Manu Ch. VIII. 233

ground should be made, & some good portion of the uncultivated land should be appropriated for the pasturage of kine and the like

A twice born man in the absence of grass, fuel &c. may, for the use of the cow, the (sacrificial) fire, and the Deity, take from anywhere, the grass, wood and flowers (respectively) without opposition, as if (they were) his own. But fruits, he should take from an unenclosed spot only, vide the text of Gautama<sup>1</sup>. For the cow and the sacrificial fire, he may take as his own grass, and fuel, as well as the flowers of creepers and trees, and fruit also, if they be unenclosed.

This moreover, supposes an absence of pre occupancy, for, should a thing be occupied, property also vests by occupancy in others also besides twice born men, as has been declared by the same Author 'A man becomes owner by inheritance purchase partition, seizure or finding'

As for what is again said in the text 'He indeed who seizes grass, or wood or flowers or fruits without asking (permission of the owner) deserves (the punishment of) the amputation of his hand,' it applies to persons other than the twice born or where there is no distress, or implies a purpose other than that of (feeding) the cows &c.

#### Sûlapâni

##### Yâjñavalkya Verse 166

At the option of the village or of the villagers a pasture ground for the cows and the like may be made or by the wish of the king land. The twice-born may take grass water etc. from all places when there is no open forest he may take like his own from places appropriated by others (166)

Pace 112\*

Here is another rule being propounded to provide for the convenience of cows and other cattle for standing, sitting &c.

##### Yâjñavalkya, Verse 167

A space of one hundred *Mhasus* in extent should be left between a village and the fields, of two hundred, for a small town, and of four hundred, for a city

1. Balambhatta notices a diff rent reading, अथवा यः for the protection of cattle

2. Ch XII 27 in Anandasrama No 28 Vol II Part I Sacred books of the East p. 241

3. Ch X 31

4. Of Narada—Balambhatta Colebrooke assigns it to Gautama See p. 90 Dig II

5. A *Mhasus* = pole of four cubits

Mitākṣharā—The space to be left between a village and its fields should be one hundred *Dhanus* in extent on all sides, except from Village Kharvalasya, round a small town, with abundant thorny bushes growing in continuity around it, the extent of the space should be  
 5 two hundred Nagarasya, round a city, with the concourse of an immense population, the intervening space should be, by measurement, more than four hundred *Dhanus*.

Thus ends the chapter on  
 'Disputes between the Owners & Keepers of cattle.'

#### Vīramitrodaya

Indeed, when the (whole) region is absorbed by the agricultural fields, how can there be a provision for the cows to feed or to roam about, in all cases there being a likelihood of punishment? So the Author says

Yājñavalkya Verses 166, 167

15 *Gopachādro*, 'the pasture ground for cows, i. e. an uncultivated portion of land intended for the cows to roam about, should be determined upon by the residents of the village or by the king at their option by regard to the vastness or smallness of the land. The twice born, moreover, may take grass, wood, and flowers from all quarters, even  
 20 from the portions of lands accepted as donations, *samrat*, 'like one's own, i. e. like from his own field.'

Having thus treated of the feeding of the cows, the Author provides for their roaming about viz. *Dhanus sataṁti*—'a hundred *dhanus* etc. A measure of four hands is a *dhanus*, a hundred of that in extent i. e.  
 25 expanse, on all the four quarters, land to be left out in the ground intervening between the village and the fields. *Kharvala*, a place better than a village, but inferior to a town. For that, the intervening space should be two hundred *dhanus*, and for a town, four hundred *dhanus* space should be left between the fields. Moreover, that portion of the  
 30 ground is utilised for the cattle to roam about and rest, therefore there is no penalty. This is the substance. (166-167).

#### Sūlapāṇi

Yājñavalkya, Verse 167

Four hands make a *dhanus*; a hundred of it make a *prasthā*. The intervening space between a village and the fields should be left on all sides  
 35 for the cattle to roam. For a village of the type of *kharvala*, where there are many artisans and agriculturists twice the above. For a town, four times (167).



## CHAPTER XI

## Of Sale without Ownership

Now the Author introduces the chapter from Vyākṛā called  
 "Sale without Ownership. The characteristics of the same have  
 been mentioned by Narada" "When a thing kept as a deposit or  
 "the property of a stranger lost (by him) and found (by another  
 "man), or stolen articles are sold behind his back, it should be  
 "considered as a sale (effected) by another than the (rightful) owner."

In such a case what should be done? So the Author says

Yājñavalkya, Verse 168

The owner can recover his own (property) sold by a stranger, the  
 blame would be of the buyer if he buys not publicly. If he purchases from  
 a very low man in secret at a very low price, and at an unusual time, he  
 is (considered) a thief

Mitākshara —Swam has own i e property belonging to himself, 15  
 anyavakritam sold by a stranger, i e sold by one not the owner, if he  
 sees it then he can recover, labheta, i e he should take it. Since the  
 element of ownership is absent in the sale by one who was not the  
 true owner. The expression 'things sold' has been used to indicate  
 by implication 'things given or deposited'. For these transactions 29  
 are also similar (in nature) to a sale by one not the owner. And  
 hence has it been said? 'A sale, a gift, or a pledge made without  
 'ownership should be rescinded'.

The purchaser moreover becomes blameworthy if he buys prakāṣte,  
 not publicly, i e if he makes the purchase in secret. So if from a very 25  
 low man, hinaṁ, i e from one who cannot account for the acquisition of  
 the thing by him rakṣam, in secret, i e in a lonely place not ordinarily  
 resorted to, hinamūlyena, at a very low price, i e at a price lower than  
 the original (price) of the thing itself and vela hme, at an unusual  
 time i e at a time which is other than the proper time (if) he makes 36  
 a purchase, (e g) at night or such other time then in such a case,  
 the purchaser is (considered) a thief taskarah, i e becomes liable to  
 punishment like a thief. As has been said? 'When a thing which  
 "had been sold by another than the owner, has been recovered by

"the owner, he may keep it One purchasing openly is blameless ;  
" but a clandestine purchase is equivalent to a theft by the purchaser "

## Sulapāni

## Yājñavalkya, Verse 168

- 5 If one's own property be sold by another without his consent the former owner should get it back the blame would be of the purchaser, if the purchase be made not in the open So also, *hīnūt* 'from a very low man, such as a *chandāla* or the like, who is not likely to have the amount and even from one who is likely to have the (required) amount  
10 if purchased in a deserted place, for a very small price and at a time not proper for a purchase, one may get back the sold commodity from the hands of the purchaser and the purchaser also is regarded as a thief (168)

What should be done by the purchaser when charged by the owner ? So the Author says

✓ 4. Yājñavalkya, Verse 169

Having found goods lost or stolen he should cause the taker to be apprehended If time and place prevent (it), he shall himself apprehend and hand him over

- 20 Mitākṣharā —A thing lost or stolen, belonging to another having got by sale or otherwise (the purchaser) should  
*Śrīkara's interpretation* *cause the taker to be apprehended, bartāram naram*  
grahayet, by persons expert in detecting thieves, for his own exoneration as well as for the enforcement of the king's  
25 penalty If, however he has gone to an unknown region or is dead in course of time and it is not possible to get at the original thief, then even without producing the seller, he should himself make over that thing to the owner who had lost it. And he is discharged from all liability by doing so much Thus has (this text) been explained  
by the venerable Śrīkara

- 30 But it is improper. For, having regard to the text: 'When the "seller is pointed out there is exoneration' there would be the fault of repetition So this text is being explained otherwise

The portion of the text "(having found) goods sold, stolen &c." is a course prescribed for the owner of the lost thing (Thus) *Having found*

āsādyā, i.e. recognised a thing while the same is in the hands of the purchaser, which belonged to himself, and which was either lost or stolen, he should cause the taker, hartāram, i.e. the seller to be appre-

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hended by the police or others. If time and place permit, deśakālatpatian i.e. if there is (danger of)

waste of time, i.e. if there is danger of his running away even before the time a complaint is made to the police on account of their not being near, he shall himself apprehend, swayameva grhitwā, and hand over, samarpayet to them.

### Sūlapāni

Yājñavalkya, Verse 169

The owner also having obtained *naṣṭatuprahāram* 'the property which was lost or taken away,' should cause the person taking it, to be arrested by the hands of the officers appointed for recovering stolen property. When the officers for recovering stolen property are not available at the place, and it is impossible to protect the property until the time of their being brought over, then he should himself take it and make over<sup>1</sup> (169)

What should be done after the robber is apprehended? So the Author says

Yājñavalkya, Verse 170

When the seller is pointed out there is exoneration. The owner receives his thing, the king, the fine, and the buyer his price back from him who sold it.

Mitākṣharā —If such a buyer, when apprehended says 'I have not stolen it, but I have purchased it from another', then of him i.e. of the buyer, *vikreṭurdarsanamatrena suddhā* there is exoneration merely by pointing out the seller. And then he will not be charged (as a party defendant), but the suit will proceed between the seller pointed out by him and the owner who had lost the thing. As says *Bṛhaspati*<sup>2</sup> 'When the original taker is produced, the buyer should in no case be sued. But a suit is ordained between the original taker and the owner who had lost the thing.' In that suit if it is found that a sale was made by one who was not the owner then the man who sold, *vikreṭa*,

<sup>1</sup> समर्पयत् is obviously not a good reading

<sup>2</sup> See *Baṇamabdhā* p. 284 ll. 9-11

i. e. the seller, of it, *tasya*, i. e. of the thing lost or stolen, such as a cow &c.—from him the *owner* i. e. the one who had lost the thing will get back his *thing*, *drawyam*, *arpascha*, and the *fine* also, a fine proportionate to the (degree of) offence, and *krelā cha*, the *buyer* also, will obtain *mūlyam*, the *price*, (paid by him).

If, however, he happens to have gone to another (part of the) country, then time should be allowed for his production, regard being had to the number of *Yojanas*<sup>1</sup> (lying between) *vide* the text<sup>2</sup> "Either the purchase should be made in open (market), or the original seller should be made over. In such a case, time should be given to him (i. e. the buyer) for the production of the original seller according to (the distance of) the road." When, however, he is not able to produce the original seller on account of his not knowing the place (where he has gone), then he becomes exonerated only upon justifying the purchase, *vide* the text<sup>3</sup> "If the seller cannot be produced, the buyer should be made to justify the purchase." When, again, he does not justify the purchase either by (the testimony of) witnesses or by an order<sup>4</sup>, nor does he point out the original seller, then he himself becomes liable to punishment, *vide* the text of Manu<sup>4</sup>: "The defendant not pointing out the original seller, nor justifying the purchase, should be ordered to pay the amount to the claimant as claimed by him, and also to pay a fine."

### Sūlapānī

#### Yājñavalkya, Verse 170

Of the purchaser, the exoneration becomes established at the appearance of the seller. This is in regard to an unopen purchase. As says Brhaspati "Either the purchase should be made in open, or the original should be made over. Time also should be given for the production of the original by regard to the extent of the distance." "Original, i. e. the seller, the original owner, should take the property. In the case of a purchase not in the open the king shall recover a penalty from the purchaser. The purchaser should recover the price from the seller."

1 A Yojana is 4 kosas = 8 miles

2 Of *Katyaiana* vers 6 (1) *Balamhatti*

3 Of *Katyaiana* vers (18) *Balamhatti*

4 Not found in Manu. The Author of *Mayukha* and others assign it to *Katyaiana*, vers. 619

If a purchase be made in the presence of an assemblage of tradesmen, it need not be paid over to the owner either. So says Marichi <sup>1</sup> "What was purchased in the presence of an assemblage of tradesmen or was known to the king's officers, what was purchased from one whose whereabouts are not known, or where the seller is dead in all these cases the owner should pay half the price and get back his own property. In such a case under the law, half of both is taken away. For a purchase from one who is not known there is a fault, as also in keeping it" (170)

It has been said that "The owner can recover his own (when) sold by a stranger." What should be done by one who wishes to recover it? So the Author says

### Yājñavalkya Verse 171

Proof of a thing lost must be made by the evidence of the source of the acquisition, or of possession, otherwise, on failure of proof by him he should be made to pay the king a fine equal to the fifth part

Mitākshara — Āgama, by (the proof of) the source of acquisition, e.g. by inheritance, purchase or the like or also upabhoga, by possession, & e.g. by proof thereof, e.g. "This was my property and the same was lost and recovered &c" must be made bhāvyam : & established by the owner of it. Anyathā otherwise, & e.g. if the owner do not make out (his case), pañchabaadho a fifth part, & e.g. a fifth portion of the lost thing, should be paid by the owner of the lost thing as fine to the king

Here moreover, the order<sup>2</sup> (of proof) should be as follows. The original owner should prove the thing (claimed to be) lost as being his. Then the purchaser, in order to obviate the charge of theft, as also that he may get (back) the price (paid by him) should produce the seller. If, however, he is unable to produce him then for exonerating himself from any charge he should justify the purchase, and make over the thing (which was) lost to the owner

### Vīramitredaya

Now begins the portion of *Vyavahāra* known as Sale without Ownership

Yājñavalkya Verses 168 169 170 171

His own property sold by another who was not the owner, the owner gets back from the purchaser, as a sale by one not the owner

<sup>1</sup> To the same effect is *Brhaspati* see Ch. XIII 7-9

<sup>2</sup> See *Katyayana* verses 613, 614 *Apararka* p 777

cannot invest the purchaser with the right of ownership. The purchaser, moreover, when the purchase has not been made openly, would be guilty of a fault which will bring on punishment. For an open purchase, however, there would be no penalty, *sic* the text of

5 Manu<sup>1</sup> "If the original cannot be produced, the purchase being open, "the buyer is exculpated and should not be punished, and be let off "by the King, but the (original) owner who lost the property shall "get it back

Similarly, *śānti*, 'from a very low person, as to whom there could

10 be no possibility of the right of ownership of the article being in him. Also *rahaḥ*, 'in secret, in a lonely place, and *hinamūḥye* 'at a very low price, for the payment of a comparatively small price, for such a purchase the purchaser should be punished as a thief. By the use of the word *cha*, are included sales by slaves and the like. That has been stated by

15 Nārada<sup>2</sup> 'One purchasing from a dependent not authorised by the owner, "or from a disreputable individual, in secret, at a very low price, at an "improper time, incurs liability for the same offence (168)

Of the owner of the lost property, when the article which was taken away was found by the owner, the purchaser who had got it by purchase,

20 when charged by the owner, should cause the person who had taken it away, to be arrested by the officers of the state or the like. So says Nārada<sup>3</sup> "The purchaser should not conceal the source from which "he obtained it, he becomes exonerated by (pointing out) the source "of it. In case of prevarication, he becomes equally guilty, and incurs

25 'the entire penalty for it (the offence)'. 'In case of prevarication i.e. for concealing the origin (of his acquisition) If time and the place do not permit and in the absence of the state officers or the like, when charged by the owner, the purchaser may himself hand over the seller to the owner (169)

30 Here the reason *śāntretdarsanti* 'by pointing out the seller, i.e. by pointing (him) out to the owner, there is 'exoneration, *siddhiḥ*, of the purchaser, i.e. absence of the guilt inducing a penalty. The word *cha*, 'and', has the sense of *tu*, 'however'

Thus *śāntre* 'the seller, i.e. of that article—since *tasmāt*, 'from him, i.e. from the one pointed out by the purchaser, *śāntmano* 'the owner, *dravyam*, 'the article i.e. that which was the subject matter of the purchase, *kratū*, 'the purchaser also, its price, and the King also obtains the penalty in accordance with the (magnitude of the) guilt (170)

1 Ch VIII 203

2 Ch VII 7

3 Ch VII 4 for अग्र्ये the print reads अग्र्य-which is correct and has been adopted in the translation

It has been stated (above) that he obtains. There, if the right of ownership is established by the owner, then it would be so the Author says, *Āgamena*, 'by the source etc'. The lost property, should be established to be of his ownership by (the proof of) the source of his acquisition such as acceptance as a donation etc. or by (the proof of) possession, or by any other than these: & by other means of proof. 5

*Tena*, 'by him', & by the owner of the lost property, if there the right of ownership is not established, *pañcabandhak*, 'a fifth part', & a penalty equal to a fifth portion should be levied by the king. In some books the reading is *panchanamsak*. When the reading is 'to the king', in the dative case-ending, the supplement is 'should be given'. 10

Here, this is the result. An article sold by one not the owner, should be established by the owner to be of his ownership at that time. By the purchaser also, an open purchase should be established for immunity from the punishment by the king, and to the owner also must be pointed out by him the seller. From him he should recover back his own purchase money, and should make over the article under purchase to the owner and cause a penalty to be paid to the king. In the case of impossibility to produce him, however, then not the article (itself) to the owner, but the entirety or half (of the price) must he pay to the owner. That has been stated by *Katyāyana*. 'Should the owner of the lost article establish it as his own by (the evidence of) his kinsmen and by proving that it was neither given, abandoned, or sold the owner gets his own back'. 15 20

*Bṛhaspati*. "When a purchase was made before an assembly of merchants, and was known to the king's officers, but was purchased from a person of unknown habitation, or where the seller is dead, the owner, upon paying half the price may recover his own property". 25

It may be said that it has been stated before "If the original cannot be produced", and the subsequent text is "when the seller is in a foreign country", but thus there is no contradiction (168-171). 30

### Sūlapani

#### Yājñavalkya Verse 171

*Āgamena* 'by the source of acquisition' such as a gift or other means of acquiring wealth the owner of the lost property should establish (his title to) the lost property. *Atanyathā*. Otherwise: & if the owner of the lost property does not prove, a fifth portion should be taken by the king as penalty (171). 35

1 अतः अन्यथा *Varanasi* *āgama* admits other means. Both *Visharupa* and *Aparārka*, however, construe *atanyathā* as अतः प्रकृतद्वारा न पश्यामि पदतो etc.—and set it out as any other means of proof see *Aparārka* p. 776.

The Author mentions a rule regarding one who shields a robber  
Yājñavalkya, Verse 172

He who receives from the hand of another, a thing stolen or lost without informing the king, shall be fined ninety six panas

- 5 Mitākṣharā —*Itam pranaṣṭam, a thing stolen or lost, and lying in the possession of the thief &c, he who takes it back forcibly or by similar means saying 'this now has stolen my thing', without informing the king, such a one shall be fined six and ninety panas, as he becomes guilty by shielding the thief*

PAGE 114\*

- 10 Viramitrodaya

For one who not being the owner and sells, for a purchaser from him, and for the owner who shields these, the Author states a penalty

Yājñavalkya Verse 172

- 15 Should be punished By the use of the word *tu*, 'however, when information is given, the Author cuts off the penalty (172)

Sūlapāni

Yājñavalkya, Verse 172

- 20 *Itam pranaṣṭam na, 'A thing which was either stolen or was lost' if one takes it from the hand of the thief etc saying this is mine, without informing the king such a one should be punished, as he becomes guilty of shielding the thief (172)*

The Author mentions a rule regarding a thing recovered by the king's officers

Yājñavalkya, Verse 173

- 25 A thing which was lost or stolen, and which had been recovered by the customs officers or by the local watchmen the owner may take away within one year, (and) after it, the king

- 30 Mitākṣharā:—When however, a thing lost or stolen, has been produced before the king by the officers of customs, or by the watchmen of the place, then, if the owner of the lost thing appear *samvat sarādarvāk within the period of one year*, he shall get the thing (back) After the lapse of one year, however, the king shall take it

- 35 The king also should cause a proclamation to be made among the people, about the thing brought by his officers, and preserve the same for one year As 'says Gaitama' 'Those who find lost (pro



"perty) the owner of which is not known shall announce it to the king. The king shall cause it to be proclaimed and hold it in his custody for a year. As for the other rule stated by Manu<sup>1</sup> Property the owner of which has disappeared the king shall cause to be preserved as a deposit for three years within the period of three years the owner may claim it after that the king may take it, it refers to the property of a Brahman who is more over well versed in the Veda and is of good conduct. The deduction of a sixth part has been stated by the same Author<sup>2</sup>. Now the king remembering the duty of good men may take one-sixth of property lost and afterwards found or a tenth or at least a twelfth. The sixth and other parts should be understood to be recovered (second in the thing is claimed) during the third second or the first year respectively<sup>3</sup>. This moreover has been explained before

Satapani

Yājñavalkya Verse 173

Property which was lost being taken away by thieves etc and was recovered by the customs officers etc that the owner may take within one year. Afterwards however the king. As to what had been stated by Manu<sup>4</sup> and others viz. Property the owner of which has disappeared the king should cause to be preserved as a deposit for three years that has reference to gold and other durable property (173)

The Author mentions an exception to the rule stated by Manu regarding the retaining of a sixth or other part in the case of particular chattels

Yājñavalkya Verse 174

The owner of a beast having single hoofs should pay four pāṇas for men and two each for a buffalo camel or a cow, and a fourth each for a goat or a sheep

Mitakshara — Ekasaphi su animal having a single hoof e.g. a horse &c. if lost and found again its owner should pay the king as a fee for its protection four pāṇas. Manushe for men i.e. if the thing be a human being five pāṇas. Ajavike for a goat or a sheep however one-fourth (of a pāṇa) for each. For a buffalo a camel or a cow as

1 Ch VIII 30

2 Manu Ch VIII 33

3 Balabhattacharya explains that the order here referred to is inversely to the original enumeration so that for the first year 1/3rd part 2nd year 1/10th and for the third year 1/12th part may be taken

charges for protection, he should pay two *panas* for each head. Thus is the rule to be construed in reference to all. Although the goat and the sheep are mentioned together in a conjunct compound *ajāvikaṃ*, still by the force of the repetition in the expression 'one-fourth one-fourth each' the meaning deducible is that it refers to each individually.

Here ends the chapter on "Sale by One Not the Owner"

#### Viramītrodaya

If the lost article is not brought back by the owner, but on the other hand by the king's officers, in such a case the Author states the adjustment.

#### Yājñavalkya, Verses 173-174

By the customs officers, or by the local watchmen, *āhīraṃ*, 'recovered', property which was lost was recovered, that should be preserved by the king for one year, within that period if the owner who had lost it establishes it as his, he shall take it or get it. *Pirato*, 'after it', i.e. after a year, the article for which the right of ownership of (any) other has not been established, the king may take (173).

The Author mentions the charges for the preservation of lost property.

*Ehasaphe*, 'for animals with one hoof, such as horses and the like, on the property being lost, four *panas*, to the king, shall the owner of the lost thing pay. When, moreover, the lost article is a human being, five *panas*. For supervision in connection with the buffaloes and cows, two for each, and for goat and sheep 1 i.e. for a he goat and a ram, one should pay a quarter of *pana* for each.

'The lost property which was recovered, the king shall (keep as a) deposit for three years. Before (the spring of) three years, the owner may take, afterwards the king may take. This text of Manu', however has a reference to the (property of a) Brahmana learned in the Vedas and of illustrious character, the present text is in regard to cases other than that, and thus there is no contradiction (173-174).

Thus ends the chapter on Sale without Ownership

#### Sūlapani

#### Yājñavalkya Verse 174

*Ehasaphe* 'in regard to one hoofed animals such as the horse etc., when lost and recovered by the king one should pay four *panas* (to the king) for its preservation (174).

Thus ends the Chapter on Sale without Ownership

## CHAPTER XII

### Of the Resumption of Gifts

Now is being expounded the Chapter of Law called Gifts which has obtained a twofold designation:—the Resumption of a gift or Non resumption of a gift, according as the parties concerned resort to ways which are proper or improper. Its characteristics have been stated by Nārada<sup>1</sup>. When a man wishes to take back a thing which he has not properly bestowed it is called a resumption of gifts, a title of law. That title of law wherein having bestowed a chattel *not properly*, *asamyak*, i.e. by means not laid down as proper, a man wishes to recover it back, (that title) is called 'Resumption of Gifts' i.e. that transaction of gift where there is resumption of that which had been given. And by having resort to legally prescribed methods its converse in the same title at law comes to be known as Non resumption of gifts. That title at law called the law of gifts in which there is non resumption or non retaking of what had been given, is called the 'Non resumption of gifts'. That moreover is fourfold, having regard to its division into what may be given and what may not be given. As says Nārada<sup>2</sup>. What may be given, and what not valid gifts and invalid gifts, thus the law of gifts is declared (to be) fourfold in judicial affairs. There, by 'What may be given', *deyam* is expressed to be that which can be a fit subject matter for an unforbidden transaction of gift. By 'What may not be given' *adeyam* is indicated that which is unfit to be given either on account of its being not one's own property or its being prohibited (as a thing to be given). That on the other hand which had been given by one in full possession of his faculties and which cannot be revoked is called a valid gift. *Dattam*. And an invalid gift *Adattam* is described to be that which may be taken back. With a view to describe this in brief the Author says

Yājñavalkya, Verse 175

One's property may be given, without detriment to the family

Mitākshara --Swam one's property i.e. his own *kulumbāvrodhena* without detriment to the family i.e. without impediment to the family i.e. so much only should be given as may remain after (providing for) the maintenance of the family. Since its maintenance is a necessity

For says Manu<sup>1</sup> 'Aged parents, a chaste wife, and an infant son, should be maintained even by doing a hundred misdeeds,' so said Manu 'Without detriment to the family'—by this the Author points out one class of things which may not be given  
 5 'One's property one may give—by this also, the unendowable character of the five kinds of property<sup>2</sup>, the Anvīṭa<sup>3</sup> and Yīchitaka deposits as well as a pledge, a joint property, and a Nikshepa deposit has been indicated by the method of negative<sup>3</sup> reasoning. As to the eightfold character of things not liable to be given which has  
 10 been mentioned by Nārada<sup>4</sup> 'An Anvīṭa deposit a Yīchitaka, a pledge a joint property, a deposit, a son, a wife the entire property<sup>5</sup> of one who has offspring (1) These have been declared by the  
 'revered sages as inalienable even in times of extreme distress, as  
 'also that which had been promised to another (5)' This text only  
 15 intends things which are inalienable, and not as indicating an absence of the right of ownership as the right of ownership exists over a son a wife, the entire property and that which had been promised. The nature of Anvīṭa and the rest has been already explained before<sup>5</sup>

### SŪtapant

#### Yājñavalkya Verse 175

20 When there is no wife or son one may give what is his without detriment to (the interests of) the family. When however sons also exist the entirety should not be given. What has been promised to one should not be given to another.

25 In a period of adversity sons etc may be given so says Katyāyana<sup>6</sup>.  
 Either in a sale or in a gift must not be given when unwilling. In times of adversity however a gift or even a sale may be.

30 Unwilling i.e. the sons and the rest. Even there an only son must not be given vide the text of Vasistha<sup>7</sup>—Never however should one give an only son. (175)

1 Not found in the printed editions of Manu.

2 See pages 840-841 above for an explanation of these terms as given by Vijnanesvara himself.

3 The ऋण method of reasoning i.e. by an opposite way. See note 3 page 707 above for a fuller explanation of this term and also of the corresponding term ऋण. The meaning is that by saying that one should give what is his to a property a necessary implication is raised against the gift of things which are not held in the right of full ownership i.e. over which the donor has only a partial right. 4 Ch. IV 45. 5 i.e. on page 101 text and p 810 tr above.

6 Verses 638-639. 7 Ch. XI 3.

By<sup>1</sup> reason of the text "One's property he may give", an occasion might arise for the giving away of a wife and a son and the like. With a view to obviate this, the Author says

### Yājñavalkya, Verse 176

Except a wife and a son. Nor, when there is progeny his entire property, as also what had been promised to another. 5

Mitāksharâ —Dārasutādrite<sup>2</sup> except a wife and a son, i. e. excluding the wife and the son, he should give his own property, and not a wife or a son. This is the meaning. Similarly, when the son grandson and similar ananya, progeny, exist, the entire property he should not give, vide the text<sup>3</sup> "Having begotten sons, he should ' 10  
"duly initiate them, and provide for the maintenance of these." So also, gold &c. anyasmai pratistutam, when promised (to be given) to another, should not be given to any other.

Having thus mentioned property which may be given, with the exception of a wife and a son, the Author mentions in that context, the rule that property which is not alienable should be accepted by the donee in public. 15

### Yājñavalkya, Verse 176 (1)

'Let the acceptance be public, especially of immovable property' 20

Mitāksharâ —Taking over is prabrahah, acceptance. That should be made prakāśab in public with a view to obviate any dispute. And sthāwarasya cha viśeṣatāh especially of the immovable, the acceptance should be made only in public. As it is not possible to prove its possession (by the donee) as can be done in the case of gold and other 25  
movables.

1 The right of ownership being undefined

2 See *Kaigarda vs Somappa* 33 Bom 669 at pp 674 687 where Chandavarkar J has discussed this passage and its bearing upon the relative rights and positions of a son and a father in a Mitākshara family

3 Of Manu—Balambhatta

4 See *Haryjwa vs Anwa* 4 Bom H O R A O J 31 at p 34 and also *Kakdas vs Kachya* 1st I I A 218 at p 216 where this passage has been translated by the court

Having thus referred to a subject which only arose incidentally, the Author proceeds further with the subject under discussion, and says

### Yājñavalkya, Verse 176 (2)

Whatever is promised (to be given) shall be given: Having once given (it), let him not resume (it).

Mitākṣharā:—Deyam pratīrutam chaiva, whatever has been promised to any one as a religious charity, must necessarily be given to him, if the other does not swerve from (the path of) religion. If, however, he swerve, then it should not be given. As Gautama<sup>1</sup> has stated: "Even if he may have promised, he should not give it to one who has irreligious associations".

Datwā nāpaharet punah, what had been given, let him not resume it. From this it follows that whatever has been completely given according to law, should not be resumed in (the case of) all the seven classes (of valid gifts). But should be confirmed in that condition; but also that, what had been given in an illegal manner must be resumed in (the case of) all the sixteen kinds of invalid gifts.

Nārada<sup>2</sup> also having premised that "Valid gifts are of seven kinds, and invalid gifts of sixteen kinds" has dealt with the characteristics of valid and invalid gifts thus: "The price paid for merchandise, wages, (a present offered) for an amusement, (a gift made) from affection, or from gratitude, or as a woman's Śatka, and a respectful gift, are the seven kinds of valid gifts" (8).

Invalid gifts are the following (sixteen): "What has been given by one under the influence of fear, anger, sorrow, sudden excitement, or pain; or as a bribe, or in jest, or fraudulently, under false

1 See *Gāndhāra vs. Uderam*, 36 Bom. 29 at p. 35, where Chandavarkar J. has translated this passage.

2. This translation differs from that given by Chandavarkar J. in 36 Bom. at p. 35. The translation given there is obviously not in conformity with the text of the Mitākṣharā, which makes it a condition precedent for the completion of the gift, that the donee should not swerve from religion.

3 Ch. IV. 23.

4 Ch. IV. 8-11 See *Haryam vs. Naran*, 4 Bom. H. O. R. A. O. J. at p. 33.

5. See p. 1135 note 4

"pretences (9); Or by a child, or by a fool, or by a person not his own master, or by one distressed, or by one intoxicated, or by one insane; or in consideration of a reward thinking 'This man will 'do me some service' (10); and also that which was given to an unworthy person thought to be worthy, or for an unlawful purpose; 5  
"whatever gift has been made through ignorance (of real facts) is "considered as an invalid gift."

The meaning is this: What has been paid as "the price for "merchandise" i. e. a thing bought. "Wages" i. e. the salary paid to one who had done work. "For amusement" i. e. given to the bards, 10  
singers and the like. "From affection" i. e. given to daughters, sons, and the like. "From gratitude" i. e. to one who has conferred any obligation; given by way of repaying the obligation. "A woman's "Sulka" i. e. that which was given to the relations of a damsel for (bringing about the) marriage. And "a respectful gift" i. e. what 15  
was given and the result of which is not observed (in this world). These seven kinds of gifts are valid gifts, and must not be resumed.

"Through fear", what was given to the keepers of prisoners &c.  
"Under the influence of anger" i. e. what was given to another (as an inducement) for removing his enmity towards sons and the like. 20  
What was given in pangs of grief caused by the separation of a son or a similar cause. "By way of a bribe" i. e. given to persons in

1. i. e. not having tangible results in this world.
2. For a lucid explanation of the quotation from Nārada see Asahāya's commentary of Nārada on this passage and translated by Dr. Jolly at pp. 129-130 (notes) of Vol. XXXIII of the Sacred Books of the East.
3. वदिमहादि—This term is indicative of persons of dangerous character, such as rogues, ruffians &c. Asahāya explains it as follows—"e.g. if an honest man promises one hundred drachmas to a ruffian who addresses him, while he is passing through a forest, with the words, "If thou givest me one hundred drachmas, thou shalt live. Otherwise thou shalt die."
- Bālabhāṭṭa suggests as an example, 'gifts' promised or given to the jail officers &c.
4. See *Shri Sitaram Pandit vs Shri Haribar Pandit* 35 Bom. 169 at p. 169 per Chandavarkar J. where this passage has been translated differently thus: "Something paid to a person bound to do an act, with the object of removing an obstacle to the performance of his duty." While Vajñānēśvara's explanation obviously refers to a gift made to a person in authority, with a view to removing all obstructions to the successful termination of the matter under consideration. To the same effect as Asahāya

- authority for the removal of obstruction to (one's) business.  
 "In jest" i.e. what has been, as a fun, given. Even (when) one  
 man gives his own property to another and that other also gives his  
 to him. This is "a fraudulent gift." "Under a false pretence" i.e.  
 5 (where) intending to give one hundred, he stipulates for a thousand,  
 and gives. "By a child" i.e. by one who has not attained the age  
 of sixteen. "By a fool" i.e. by one who is ignorant of the popular  
 usage. "By one who is not his own master" i.e. by a son, a slave,  
 or the like. "By one distressed" i.e. by one diseased &c. "By one  
 10 "intoxicated" i.e. by one intoxicated by some intoxicant. "By one  
 "insane" i.e. by one who is overpowered by an insanity such as that  
 brought on by air &c. "Given in expectation of a return" i.e. (where a  
 gift is made in the expectation that) 'he will bring about the accomplish-  
 "ment of my object.' Given to a man who is not versed in (all) the four  
 15 Vedas on his representing that he was versed in the four Vedas. Given  
 to one, who having obtained a gift on his representing that he would  
 perform a sacrifice, but who appropriates it in gambling and similar  
 other acts. Gifts of these sixteen kinds as enumerated above are  
 invalid even if they were (completely) made, since these can be  
 20 resumed.

The invalidity of a gift made by 'one distressed', attaches to  
 such as are those other than relating to religious purposes. Since  
 Kātyāyana has observed: "If a gift<sup>1</sup> be promised by a person whether  
 ' in health or in distress, for a religious purpose, and he die without  
 25 "making it, his son should be compelled to make it good, of this  
 "there is no doubt."

Moreover, here is another text which is expressed in a concise  
 form, but which is common to all (kinds of) disputes. Says Manu:  
 ' A fraudulent pledge or sale, a fraudulent gift, acceptance, and any

1 See *Ghāṭabā* vs *Udumbar* 30 Bom. 29 at p. 35. Where Chandavarkar J. observes, The word son is here merely illustrative and stands for any one who inherits or takes the promisor's property. These are merely, not mandatory texts, but the principle underlying them is that where a Hindu who has directed a trust of his property for a religious purpose dies before giving effect to it, Hindu Law authorises his heir to take steps for carrying out his directions after recovering the property from a trespasser.



"transaction where he detects fraud, he (i.e. the judge) shall annul  
"the whole of such (transaction)" *Yoga* means fraud. The meaning  
is, that by every kind of fraud intended to be practised (in future),  
(if) the transaction of pledge, sale, gift or acceptance &c were  
brought about, upon the discovery of that fraud, these transactions 5  
of sale &c should be declared null and void. For him, moreover,  
who accepts any of the sixteen invalid gifts and also for him who  
bestows any of the seven kinds which ought not to be given a penalty  
has been declared by Nārada<sup>1</sup>. "He who accepts an invalid gift  
"through avarice, as also he who bestows one which ought not to 10  
"be given the donor of the unendowable thing deserves punishment,  
"as also the acceptor of the invalid gift."

Here ends the chapter on the Resumption of Gifts

#### Vīramitrodaya

Now, the chapter of Vyavahāra known as non-delivery of gifts. 15  
"Now, what may be given, and what not, valid gifts, and also invalid  
"gifts, thus the law of gifts is declared to be fourfold in judicial matters,  
the Author expounds this text of Nārada<sup>2</sup>

Yājñavalkya, Verses 175-176

*Swam* 'one's, i.e. of one's own property, excepting the wife and 20  
the son, without detriment to the family, i.e. the family which must  
necessarily be maintained, *deyam* 'may be given'. The meaning is  
that what may remain after (providing for) the maintenance of the  
family may be given.

Having, thus stated what may be given, the Author states what 25  
may not be given. When there is progeny i.e. when the son, grand-  
son and other descendants exist, *sarvasam*, 'the entire property',  
should not be given. *Anyasmai yatpratistutam*, 'what has been  
promised to another, i.e. what has been agreed to be given, that should  
not be given to one in excess of that. By the use of the word *cha*, 30  
'and also', are included other things not to be given stated by other  
Rishis. So also Brhaspati<sup>3</sup>. "Common property, sons, wife, a pledge,  
"the entire property, a deposit, things borrowed, and similarly what has  
'been promised to another, thus the property which may not be given

"a reward, or to an unworthy man mistaken for a worthy person, or for an immoral purpose, the owner may resume the gift".

On the occasion of ( a discussion as to ) what may be given, the Author states the necessity of openness in the acceptance of a gift-*pratigraha* ' an acceptance ' etc. With a view to obviate a dispute, an open acceptance of a gift should be made. Especially of an immovable, the acceptance must be made in the open only, as it is not possible to prove its possession by oneself as ( can be done ) in the case of gold and other movables.

Now the Author proceeds with the matter under consideration : What had been promised as a religious charity must necessarily be given, provided the donee does not swerve from ( the path of ) religion, as Gautama<sup>1</sup> has stated : " Even if he may have promised, he should not give it to one who has irreligious association ". What was given properly as of the aforesaid seven kinds, having once given, one should not take back. By the use of the word *cha*, 'also', it is indicated as the cumulative sense of the text, that of the sixteen kinds of invalid gifts, one may take back ( 175-176 ).

Thus in the commentary on Vāṣṇavallīya ends the chapter on Nondelivery of gifts.

### Śāṭapāṇi

#### Vāṣṇavallīya, Verse 176

An acceptance of a gift should be known to many. *Pratigrahaṃ* ' what has been promised, ' i. e. promised by word of mouth. Even there, as regards immovables in which many kinsmen are interested, should be known to the kinsmen and others. What has been promised by a word of mouth must certainly be given. One should not take back, what was once given. As says Hārīta : " By not giving what was promised, as also by cancelling a gift, one goes to various hells, also becomes born a lower animal. "

Bṛhaspati<sup>2</sup> states what may not be given : " What has been given by one angry, or resenting an injury, or through inadvertence, or by one distressed, one infatuated, or extremely old or terrified, overpowered by grief, and what is given in a soft mood, these are declared as invalid gifts. What is given through desire for a reward, or to an unworthy man mistaken for a worthy person, or for an immoral purpose, the owner may resume the gift " ( 176 ).

Thus ends the Chapter on Resumption of Gifts

## ✂ CHAPTER XIII

## Rescission of Purchase.

- ✓ Now is being described the 'Rescission of Purchase' Its nature has been described by Nārada: "Where a purchaser, after having purchased (an article) for a price, does not approve of it, that is termed "Rescission of Purchase" a title of law." There also the same Author<sup>2</sup> has stated that on the day on which the purchase was made, on that same day should the thing be delivered back without any change: "When a purchaser, after having purchased an article for a price, considers that he has made a bad bargain, he must, return it to the vendor on that same day in an undamaged condition" In the case of a return on the second or any subsequent day, a special rule has been mentioned by the same Sage<sup>3</sup> "When the purchaser returns it on the second day, he shall lose a thirtieth (part) from the price; twice as much (if it be returned) on the third day; after that time, "it is absolutely the purchaser's" The meaning is, that thereafter a rescission should not be made This (rule) moreover, has a reference to things perishable by use, other than seed and like other things

- 20 In the case of the purchase of seed &c, an entirely different rule prevails as to rescission. So the Author says

## Yājñavalkya, Verse 177

- The time (allowed) for the trial and examination of seed, metal, beasts of burden, jewels, females, milch-cattle, and of males is respectively, ten days, one day, five days, seven days, one month, three days, and half a month

- Mītāksharā — *Biṣam seed*, i.e. the seed of paddy and other grain  
*ayah, metal*, such as iron &c, *wābyah, a beast of burden*, i.e. a bullock and the like, *raṅgam, jewel*, i.e. pearls, corals &c; *stree, a female*, i.e. a dāsi, *dohyam, milch cattle*, e.g. a she-buffalo &c, *pumân, a male*, i.e. a male slave  
 30 Of these, i.e. of the seed and the rest, the period for trial and examination should be understood to be ten days &c respectively in the order of (their) enumeration And when, while under trial and examination, there occurs a repentance on account of the badness of the thing

(purchased), then the sale can only be rescinded within ten days, and not later (than that period) And this is the reason of this rule

As for the text of Mān<sup>1</sup>: "If anybody in this world after buy, ing or selling anything, repent of his bargain, he may return or "take back that chattel within ten days", that refers to things not hable<sup>2</sup> to destruction by use, such as a house, a field, a vehicle, a bed, a seat and the like, excepting iron and the other things with regard to which the rule has been stated (as above)

Moreover, all this has a reference to what was bought without an examination What, therefore had been examined<sup>3</sup> and then purchased after an agreement, that is not to be returned, it should not be returned to the seller That rule has been laid<sup>4</sup> down thus "The (intending) purchaser shall first examine an article, : e (before "purchasing it) having regard to its faults and excellences, that "which has been approved by the purchaser after a close examination "cannot afterwards be returned to the vendor"

### Viramitredaya

Now the Author expounds the chapter of Law called the Rescission of purchase which has been characterised by Narada<sup>5</sup> thus

"Where a purchaser, after having purchased (an article) for a price, does not approve of it, that is termed a 'Rescission of Purchase' a title of law

### Yājñavalkya, Verse 177

Up to ten days and the like is the limit for the examination of seed etc, and therefore if within that interval there is a revulsion about the bought article, then it should be returned, and not after that This is the meaning Ten days, eleven days, five days, seven days, a month, three days, half a month, is (the limit) respectively for seed, metal, beasts of burden, such as horses etc, jewels, females, such as the dēts etc, milch-cattle, such as the cow etc, and of males such as servants etc.

1 Ch VIII 222

2 There is a mistake in the text on p 117 l 16 for भोगविनश्य read भोगानिश्य

3 The reading वरीणिन मत् is better than वरीय given in the text at l 16 and in translating the text, the former reading is adopted and not वरीय Bāṣṇabhaṭṭa reads similarly, and notices वरीय as a V L but apparently does not prefer it

4 By Nirada Ch IX 4

5 Ch IX 1

- "If anybody in this world after buying or selling a thing, repent  
 "of his bargain, he may return or take back that chattel within ten days  
 "After ten days, however, one cannot take back or compel it to be  
 "taken back, one taking or returning either should be punished six  
 5 "hundred by the king This text of Manu<sup>1</sup> has application to seeds  
 only. Vide this text of Kātyāyana<sup>2</sup> "Whatever article which when  
 'purchased was not known to be faulty, but was afterwards discovered  
 'to be so, that article of merchandise so purchased should be given  
 "(back) to the owner in time, otherwise however, not 'In time i. e.  
 10 within the period of inspection and test, 'Otherwise, i. e. after that All  
 this, moreover, is to be observed in the case of all that was purchased  
 without an examination viz since Kātyāyana has observed 'not known,  
 and also the text of Bṛhaspati<sup>3</sup>. "One should inspect a merchandise<sup>4</sup>  
 "himself, and also show it carefully to others, after having accepted  
 15 "after an examination and approval by many, one should not give it up

- Even before the stated period also, Nārada<sup>1</sup> states a special rule in  
 regard to the return of a purchased article "When one, after  
 "having purchased an article for a price, considers that he has made a  
 "bad bargain, he must return it to the vendor on that same day in an  
 20 "undamaged condition If he returns it on the second day, he shall lose  
 "a thirtieth part from the price, twice as much if it be returned on  
 'the third day After that it becomes absolutely the purchaser's "  
 'After that', has a reference to the milch cattle "After having  
 "purchased a thing in the market such as a milch-cattle or the like, if  
 25 "out of repentance a man return it unblemished within time, he shall  
 "bear a tenth part of the price, this text of Kātyāyana has reference  
 to a period subsequent to the interval (allowed) for examination Or  
 both of these are applicable when the purchased article has been made  
 over to the purchaser Otherwise, however, "After having purchased,  
 30 "if a purchaser repent of a thing which has come into his hands, a wise  
 "man in such a case should give up a sixth part, and give up the bought  
 "article The adjustment is to be as under this text Under the text of  
 Manu viz "Not the one having a blemish, nor that which was defective,  
 "not one at a distance, nor that which was concealed, an article, the

1 Ch VIII 222-223

2 Ch XVIII 3

3 वाच्य Bṛhaspati defines a वाच्य thus (XVIII 2) "Two sorts of property are distinguished, immovable and movable when a purchase is concluded the term vendible property (वाच्य वाच्य) is applied to it" 4 Ch IX 2-3

defect of which was known at the time of the purchase, should not be returned even during the interval for inspection, since Nārada<sup>1</sup> has observed: "A second-hand garment which was in a ragged condition and "was soiled with dust, even if (it be) with blemishes, such an article when "once purchased, cannot thereafter be returned to the seller." (177).

5

## Sūlpāṇi

## Yājñavalkya, Verse 177

Of the seven things such as the seed etc. ten days and so on respectively is the period for test and determination of merits or demerits. If the fault is known before that, the commodity may be given back to the seller; so says Brhaspati: "Before this, if a defect results in the "article, then it should be returned to the seller, and the purchaser shall "get back the price" (177).

10

While treating of the (time for) inspection of milch cattle &c, the Author states the rule regarding the examination of gold and the like also

15

## Yājñavalkya, Verse 178

Gold is not reduced in fire; in (the case of) silver it is reduced by two *palas* in a hundred; in tin by eight, (so) also in lead; in copper, five, in iron, ten.

20

Mitākṣharā:—While being heated in fire, gold is not reduced. Therefore, as much may have been delivered into the hands of goldsmiths for preparing a bracelet &c., so much by weight must be returned by these. Otherwise, they should be compelled to make good the loss and be punished too. In the case of silver, however, when (a quantity weighing) a hundred *palas* is being heated, two *palas* are lost; *aṣṭau*, eight, in the case of tin, *trapuṇi*, and also lead, *viśe cha*, i.e. in a hundred, as necessarily follows. In the case of tin, as also of lead, while a hundred *palas* are being heated, eight *palas* lose weight. *Tāmre pañcha daśāyasi*, in copper five, in iron ten, i.e. in a hundred *palas* of copper, five *palas*, in those of iron, ten *palas* are lost. Here also 'a hundred' is indeed to be understood. As regards white-copper, as it is made out of tin and copper, a (scale of) reduction is to be determined in accordance with (the rules for) these. Artisans, causing a reduction further than this, should be punished.

25

30

35

## Śūlapāṇi

## Yājñavalkya, Verse 178

Gold, while being heated in the fire for being manufactured (into an article) is undiminished. Of silver, when a hundred are being heated  
 5 two *palas* are reduced. Of tin and lead, for a hundred *palas*, eight *palas*.  
 10 Copper, for a hundred *palas*, five. Thus in the case of iron, ten are reduced. In case of larger reduction, the goldsmith and the others should be compelled to pay, and should be punished also (178)

The Author mentions an increase in some cases, such as in the  
 10 case of blankets &c.

## Yājñavalkya, Verse 179

In the case of woolen and cotton yarns, the increase is ten *palas* in a hundred; in (cloth of) middling quality, five; and in fine quality, three *palas*.  
 PAGE 118\*

Mitākṣharā:—In the case of woolen yarn of rough quality, from  
 15 which blankets and similar things are prepared, in those cases, an increase of ten *palas* in a hundred *palas* should be understood. A similar rule should be understood in the case of cloth &c., prepared from cotton yarn; madhye, in (the case of cloth of) middling quality, i. e. in  
 20 the case of cloth &c., prepared from yarn which is not very fine, the increase is five *palas* (in a hundred). In cloth prepared from fine yarn, the increase should be understood to be three *palas* in a hundred. This (rule), moreover, applies in the case of cloth, which is not washed.

## Śūlapāṇi

## Yājñavalkya, Verse 179

25 In the case of a blanket or other cloth manufactured from the ram's hair, as also of cloth woven from cotton yarn, for a hundred *palas* given for weaving, an increase of ten *palas* takes place owing to an addition of paste to the fabric. In regard to the same, when it is not too fine, nor too rough, the increase is five *palas*. For one woven out of fine yarn, three  
 30 *palas* (179)

The Author mentions a special rule in regard to other articles

## Yājñavalkya, Verse 180

In the case of embroidered cloth, as also in cloth made of hair, a reduction of a thirtieth part is allowed. There is no decrease, nor an  
 35 increase in the case of silken cloth or those made of barks

Mitākṣharā —Kārmikam, *embroidered cloth* : *c* cloth prepared with pictures thereon. That cloth where a wheel or a *Svastika* or a like design is woven into by yarn fibres, is known as *embroidered cloth*, *kārmika*. That cloth, in which hair are woven into *c g* an upper garment, is a *romabaddhah cloth made of hair*. In these cases *kṣayah* a reduction, by a thirtieth part should be understood. In the case of *sūlān cloth kausēye*, *i.e.* made of silk, and of those made of *bark's*, *valkaleshucha* *i.e.* of cloth prepared from barks of trees, there is neither an increase nor a reduction. But, as much as has been given to the weaver and the like for being woven into, exactly so much should be taken back.

## Sūlapāni

## Yājñavalkya Verse 180

Where on a woven cloth or the like, a *svastika* or a similar figure is wrought by embroidery with yarn and needle, that is (called) *Kārmika* or *embroidered cloth*. Where in a cloth or the like hair are woven in that is 'cloth made of hair,' *romabaddhah (c g)* the Nepale blanket. There a thirtieth part is the reduction. In cloth produced from silk or barks of trees, such as the fine silk cloth there is neither increase nor decrease (180).

The commodities being innumerable it is impossible to consider the rule of reduction or increase in the case of each article. So the Author mentions in general a rule for determining a decrease or an increase.

## Yājñavalkya, Verse 181

When a thing has deteriorated, whatever the experts in those articles may declare after taking into consideration the place, the time, the use, and the strength or weakness, must certainly be caused to be paid.

Mitākṣharā —In the case of a hump or a silk cloth where the article has deteriorated *nashite* *i.e.* has undergone a reduction whatever the experts in those articles, *drawyānām kusalah* *i.e.* those who are versed in rules of increase or decrease in the case of those articles, after having examined into the (circumstances of) *desam* place *kālam* time, *upabhogam* use, and also the *balabalam* strength or weakness, *i.e.* durability or non durability of the article which has deteriorated may determine *lat asamsayam* that certainly the artisans must be made to pay.

Thus ends the Chapter on Rescission of Purchase



## Viramitrodaya

On the occasion of the ( rules regarding the ) examination of seeds etc., the Author states the rules for the inspection of gold and like other articles

Yājñavalkya, Verses 178, 179, 180, 181

5 *Starṇam*, 'gold' i. e. of the best quality, is not reduced in fire. *Rajate*, 'in the case of silver,' *sate*, 'for a hundred,' i. e. for a measure of hundred, two *palas* become reduced in fire. In the case of tin, zinc and also lead, for a hundred *palas* eight *palas*, for a hundred of the copper *palas*, five *palas*; for a hundred *palas* of the iron, ten *palas* become reduced in fire. By the use of the word *cha*, is added, the loss in the case of white-copper, produced from lead and copper in proportion to the parts of these ( 178 )

15 In the case of blankets and cloths prepared from the rough yarn of wool or cotton, for a manufacture of a hundred yarns, the increase is ten *palas*. For one of a middling quality, i. e. not too fine, for a manufacture of a hundred *palas*, the increase is by five *palas*. In case of very fine manufactures, however, of these, for a hundred *palas*, the increase of three *palas* is accepted, i. e. regarded as proper by the experts as it is besmeared with gruel etc. ( 179 )

20 The cloth on which, after its manufacture, a *śaṣṭika*, wheel, or the like is embroidered with the needle, is called *Kurmiṭa* 'the embroidered cloth,' where in the case of an upper garment or the like, hair are woven, that is *romabaddha*, 'cloth made of hair;' in the case of these, a thirtieth part is regarded as a proper reduction. *Kaṇīye*, 'in the case of silken cloth,' i. e. cloth made of yarn produced from cocoon of the (silk) worm, as also in regard to cloth etc. made of barks of trees, there is no increase or decrease.

25 By the use of the word *cha*, 'and,' is included absence of an increase or decrease in the case of the pounding of wheat and many other things not mentioned ( 180 )

30 In the case of those not particularly mentioned such as hemp, or linen, and other cloth, what men with special knowledge about the increase or decrease of things may declare after taking into consideration, the place, the time, the use and the strength or weakness of the lost article, that must undoubtedly be paid. By the use of the word *cha*, 'and' is added that in places where a decrease is proper, a decrease may be declared ( 181 ) [ 178—181 ].

## Śūlapāṇi

Yājñavalkya, Verse 181

40 When there is a doubt as to the quantity depreciated, whatever is declared by the experts after taking into account the place, the time, the strength and the weakness that certainly should be caused to be paid ( 181 )

Thus ends the Chapter on Rescission of Purchase

## CHAPTER XIV.

### Breach of Contract of Service

The Author now sets out discussing another title of law known as the Breach of Contract of Service. Its nature has been described by Nārada<sup>1</sup> thus —“If a man has promised to render service and does not  
 “render it, it is termed a Breach of Contract of Service, a title of law”  
 Service is the performance of an order. He who undertakes it and afterwards does not do it, that title of law is known as the Breach of Contract of Service. An attendant, moreover, is of five kinds. A pupil, an apprentice, a hired servant, a man appointed to (perform) a task, and a slave Of these, the first four are known as servants or labourers. These, moreover, do pure work. Slaves moreover such as one born in the (master's) house and the like are of fifteen sorts, and perform impure service such as sweeping the house, the door, the impure places, the street, the dust-bins &c. This has been made clear by Nārada<sup>2</sup>. “The sages have described in the *S'āstra* five sorts of “attendants. Among these are four sorts of labourers, and slaves (of “the fifth category) are of fifteen kinds (2) A student, an apprentice, “a hired servant, and the fourth,— a person specially appointed (to “do a thing), these are to be regarded as labourers. Slaves are those “born in the house’ and the rest (3) The sages have declared that “the state of dependence is common to all these, but that their  
 “respective position and income depends on their  
 “particular caste and occupation (4). Also there  
 “are two sorts of occupations, pure<sup>3</sup> work and  
 “impure work. Impure work is that done by slaves. Pure work  
 “is that done by labourers (5) Sweeping the house and the  
 “gateway, the places where impurities are deposited, the street  
 “the dust bins, shampooing the secret parts of the body, gathering  
 “and putting away the leavings of food, ordure, and urine (6) And  
 “lastly, rubbing the master's limbs when desired, this should be re-  
 “garded as impure work. All other work besides this is pure (7)”

1 Ob V 1

2 Ob V 2-7

3 As opposed to impure which is described further on in the lines following

There, by 'a student' is meant one who is desirous of studying the Vedas. 'An apprentice' is one who wishes to study the mechanical arts. He who does a work by wages is 'a hired servant'. One supervising the (work of) labourers is an officer 'specially appointed to a task'. 'Place of impurity' means a place where the leavings of the meals are thrown, such as a pit &c. 'A dust bin' is a place where the sweepings from the house, such as dust &c are stored. 'Putting away' means throwing off.

'A hired servant' (as referred to) here is of three sorts so it has been laid down. "Here, the highest class is that of a soldier, the agriculturist is the middle class, and the porters are the lowest class. "These are the three classes of hired servants."

Slaves again are<sup>1</sup> 'One born at his (master's) house, one purchased, one received (as a gift), one obtained by inheritance, one maintained during famine, similarly one who was pledged by his master (26), One released from a heavy debt, one acquired (as a captive) in war, one won through a wager, one who has offered himself saying 'I am thine', an apostate from asceticism, one enslaved for a stipulated period (27), One who has become a slave in order to get a maintenance, one led in by a female slave, and one self sold. Thus in all fifteen kinds of slaves are declared in 'S'dhira (28)'. Born in the (house of the master) of a female slave is one born at his (master's) house'. 'Purchased': i.e. by (the payment of) a price. 'Received': i.e. by a gift &c. 'Obtained by inheritance' i.e. one who was a slave of the father or other ancestor. 'Maintained during famine': i.e. one, who during famine was saved from death in consideration of his becoming a slave. 'Pledged by his master': i.e. who was made a pledge upon the acceptance of money (by the master). One reduced to slavery by being freed from his debts is 'a slave released from debt'. 'Acquired in war': i.e. one conquered and captured in a battle. 'Won through a wager': i.e.

1 By Narada Ch. V 23

2 See Narada Ch. V 26-28. It would be interesting to compare the provisions laid down here with similar provisions in Roman Law and the learned reader is referred to the same. The rules regarding the emancipation of slaves have a peculiar resemblance to those found in Roman Law.

one won after a stipulation 'In case I am defeated in this dispute, I shall become your slave.' "One who has offered himself saying 'I am "thine," i.e. one voluntarily offering himself as a slave saying 'I am thy slave.' 'An apostate from asceticism' i.e. one who has swerved from the vow of asceticism. 'Stipulated' i.e. one made a slave with the stipulation 'he shall be your slave for such a time.' 'A slave of maintenance' i.e. one who has entered into a perpetual state of slavery in lieu of maintenance. 'Led by a female slave'—a female slave (*wadaud*) i.e. one born in the house; led by her i.e. out of a fancy for her, one who has married her and entered into slavery. He who sells himself is a 'self-sold slave.' Thus these are the fifteen sorts. 5

As for the seven-fold classification stated by *Manu* in: "One made captive under a standard, a slave for maintenance, {one born in the house, one bought, and one who is given, one inherited from ancestors, and a slave of punishment, are seven kinds of slaves", that is intended to point out that these persons are (regarded and treated as) slaves, and not with a view to limit the numbers 15

Of the attendants (mentioned before) viz. a pupil, an apprentice, a hired servant, an appointed labourer, the course of conduct for a pupil has already been stated before viz: "Being invited (by the preceptor) indeed he ought to study, and whatever is acquired by him he should offer to him i.e. the preceptor." The rule for the specially appointed workman and the hired servant will be mentioned in the chapter on 'Payment of Wages' in the text: "As much work a man performs, so much will be his wages" &c. 20

With a view to state a Special Rule regarding a slave and an apprentice, the Author says 25

### Yājñavalkya, Verse 132

One enslaved by force, and also one sold by robbers, are released (from slavery); one who saves the life of his master (is released), as also (are they released) by paying the expenses of maintenance or by paying off the debt. 30

1. Ch VIII 415.

2. See Yājñavalkya Āchārādhyāya Verse 27 p. 107.

3. See Verse 136 further on page 1234.

- Mitākṣharā — Balāt, *by force*, i. e. by a forcible obstruction, one dāsikṛtāh, *who has been made a slave*. He who being overpowered and taken away by robbers vikṛtāh, *was sold*. From the use of the word 'also', *api*, are included one 'pledged' as also one 'given'. Such a one muchyate, *is released*. If the owner do not release, then he should be caused to be released by the king. Nārada<sup>1</sup> also has observed "Those who are sold after having been captured by robbers, and those who are enslaved by forcible means, must be emancipated by the king. "Slavery in their case is not allowed." He who saves the life of his master, when he was confronted by robbers, tigers &c.,—such a one also—should be caused to be manumitted. This last is a reason for freedom from slavery common to all (kinds of) slaves since Nārada<sup>2</sup> has observed "Should (however) any one out of them save his master's life when his life is in peril, he shall be released from slavery, and shall also take a son's share<sup>3</sup>."
- 15 PAGE 120\*

- The cause for the manumission of 'a hired servant' and others respectively has been mentioned. Persons who have become slaves on account of being maintained during famine, as also slaves of maintenance are released by paying off (the amount of maintenance : i. e. by offering as much money to the master as may have been consumed from the date of his enslavement. While a pledged slave and a slave of indebtedness (are released) by the redemption of these. He is released by repayment of the amount, together with interest after receiving which he was pledged by the master, or also that after paying off which he was emancipated by the master from the liability of the creditor.
- 25

- A special rule also has been stated by Nārada<sup>4</sup>. "One maintained during famine is released from bondage if he gives a pair of oxen." "What has been consumed during famine, cannot be repaid (in value) by labour (31). A slave of maintenance is released immediately on his giving up the subsistence (36). Even a pledged slave (is released).
- 30

1 Ch. V 38 This is a general rule applicable for any kind of slave. See farther on.

2 Ch. V 30 3 i. e. a share equal to that of a son (Balamhatty).

4 Ch. V 31 36 (1) and 32 and 33.

## Sûlapâni

## Yājñavalkya, Verse 182

One who has been enslaved by force, or sold by robbers, should be released from bondage, one who saves his master's life, when his life is in danger, the slave for maintenance, by paying up the expenses for maintenance and also by giving maintenance in times of famine. One maintained in adverse times also pays in cash, or a pair of cows (182)

There is, however, no emancipation of an apostate from asceticism; so the Author says

10 Yājñavalkya, Verse 183 (1)

An apostate from asceticism shall become the king's slave till death.

Mitāksharâ—*Pravrajyâ asceticism*, means a complete renunciation (of all worldly objects)—*Sannyasa*. One who is an *avasilah, apostate*, therefrom : *e* who has swerved from it (Such a one) if he has not undergone expiation, indeed becomes a slave of the king. Death alone shall terminate this (kind of) servitude. In no other time can there be emancipation.

The Author mentions a rule regarding slaves having regard to (the several) orders, *Varnas*¹

20 Yājñavalkya, Verse 183 (2)

Slavery is in the descending order of the *Varnas*, and not in the ascending order.

Mitāksharâ—Of the *Varnas* such as the *Brâhmana* and the rest a state of slavery shall exist *ânulomyena, in the descending order*. Thus of a *Brâhmana*, a *Kshatriya* and the rest may become a slave, of a *Kshatriya*, the *Vaisya* and the *Sûdra*, and of a *Vaisya*, a *Sûdra*, thus the state of slavery shall operate in the descending order. Of an ascetic, however, who renounces his own duties slavery is indeed ordained even in an inverse order. As says Nârada²: "Slavery is not  
25 "ordained in the inverse order of the (four) *Varnas*, except where  
30 "a man violates the duties peculiar to his class. Slavery is considered as analogous to the condition of a wife"

1 *e e* the classes. See Yājñavalkya Âshara Chapter IV. On the distinction based on *Classes (Varnas)* and *Castes (Jâtis)* see verses 90-96 pages 241-267.

2 Ob V 39

## Vṛamiltrodāya

Now begins the Chapter known as 'Breach of Contract of Service'. Its nature has been described by Nārada<sup>1</sup> "If one after having undertaken to render service, does not render it, it is called a 'Breach of Contract of Service, a title of law. Manu, moreover, has not treated this separately as a title of law, as he has included its treatment in the title called 'Non payment of wages, intending it for some reason to be so stated

An attendant, moreover, is of five kinds. A pupil, an apprentice, a hired servant, one appointed to (perform) a task, and a slave. There pure work is for four, and impure work is for the slave, vide the text of Nārada<sup>2</sup> "Impure work has been stated to be for the slaves, a pure work is for labourers. Sweeping the house and the gateway, the places where impurities are deposited, the street, the dustbins, shampooing the secret parts of the body, gathering and putting away the leavings of food, ordure and urine. And lastly rubbing the master's limbs when desired, this should be regarded as impure work. All other work besides this is pure. There, a pupil is one in need of the study of the Vedas, an apprentice is one desirous of learning some art, a hired servant, is one performing work for wages, one appointed to do a work i.e. one supervising by attendance over the workmen doing work. A slave also, has been stated by Nārada<sup>3</sup> (same as above p 1210 II 13-21)

Among these, the course of conduct for a Pupil has already been stated before<sup>4</sup> 112 "Being invited (by the preceptor) indeed, he ought to study, and whatever is acquired by him, he should bestow on him. Of the hired servant and of the one appointed, will be stated in the Chapter on Payment of Wages. About the slaves, and the apprentice, however, the Author states here

## Yājñavalkya Verses 182, 183

One forcibly made a slave, one sold by robbers and thus made a slave, and by the use of the words *cha*, 'and', and *api*, 'even', one given by him, as also one kept as a pledge, is released from slavery. He moreover, who saves the life of the master when attacked by robbers, tiger, etc. such a one is manumitted. By the use of the word *api*, 'even', are added other reasons for the manumission of a slave. Nārada<sup>5</sup> states these

1 Ch V 5-7

2 Ch V 26-28

3 See Ācharadhyaya 27 p 107 above

4 Ch V 31-36

“ One maintained during famine time, is released from bondage if he  
 “ gives a pair of oxen. What has been consumed during famine, cannot  
 “ be repaid (in value) by labour (31). A slave of maintenance is released  
 “ immediately on his giving up the subsistence (30). Even a pledged  
 5 “ slave (is released) if his master redeems him by discharging the debt (32).  
 “ It is, however, by paying the debt with interest that a debtor is  
 “ released (33). One who has come forward and offered himself declar-  
 “ ing ‘I am thine’, one made a prisoner in war, and one won through a  
 “ wager, these are released on giving each a substitute whose capacity  
 10 “ for work is equal to theirs (34). Also one enslaved for a stipulated  
 “ period becomes emancipated on the expiration of the period (35). One  
 “ enslaved on account of his being connected with a female slave is  
 “ released upon the female slave being kept in check (36)”. “By work  
 “ equal to theirs” *i.e.* by performing work which is proper for him. ‘Upon  
 15 the female slave being kept in check’ *i.e.* by giving up intercourse.  
 Kātyāyana says : “ When one has intercourse with his own slave, and  
 “ she gives birth (to a child); then at the sight of the issue she should be  
 “ made a non-slave; as she is with a progeny.” This, however, is only  
 when the master is without a son etc. according to Prakāśa, Pārījāta,  
 20 Ratnākara and others.

By favour also one may be released from bondage. Nārada<sup>1</sup> states  
 the procedure on such an occasion :—“He who, being pleased in mind,  
 “ wishes to emancipate his own slave, shall take from his shoulders a jar  
 “ filled with water and smash it (42). He shall sprinkle his head with water  
 25 “ containing uncrushed grain and flowers and having declared him a free  
 “ man three times, he shall dismiss him with his face turned towards the  
 “ East. From that time onwards he should be called ‘one protected  
 “ by the master’s favour,’ food may be eaten with him, and a gift may  
 “ be conferred on him ; thus he becomes approved of the good.”

Kātyāyana : “ The master is declared to be the owner of the  
 “ property which was of the slave. But to what was obtained by favour  
 “ or by sale of that property the master is not entitled. One not a slave,  
 “ if she be married by a slave, she also gets into the status of a slave ;  
 “ because her husband is her lord; and her lord is under the bondage  
 30 “ of the master.” ‘By favour &c.’—the meaning is that by one’s own  
 35 favour, or by the sale of oneself whatever money may have been  
 obtained, that the master cannot claim.



'By a slave etc—Here if the word non slave is used in anti-thesis to the word slave referred to in regard to the marriage, any other not owned by any one, or not having a master at all, when she has been married, she becomes of the ownership of the master of the husband. Necessarily, therefore, it follows that marriage with a slave has the result of release from the bondage of the former owner. And it is for this that this text occurs in a chapter on it. The cause of ownership, moreover, is the marriage by a slave with the consent of the former master. In the case of an opposition, however, there would be no obliteration of the ownership of the former master, just as in the case of a marriage with a servant girl. According to the moderners, however, if she is married by a slave without the consent of the former master, then a white courtesan should be given to the former master by the new master, and not that the status of slavery itself is not induced. They say that there exists the status of slavery in regard to the former master as an inducing cause for the taking of a white courtesan. As for the declaration of Hanschandra in the *Mārkaṇḍeya Purāṇa* "Even if released by the master a *Sūdra* is never manumitted from slavery that is born with him, who will wipe it away from him?", that is intended as deprecatory of a slave, otherwise, it should be remembered, that his own manumission from slavery would not take place (182).

*Pravrajya* etc 'asceticism etc After entering into the ascetic order, one who swerves off from it, *sa rājyaśāśa amaraṇṭikah*, 'he is the King's slave till death i.e. until the time of his death his status of slavery continues. Of him, there would be no release as a slave. This is the meaning.

*Varaṇāśa* etc, 'Of the *varṇas* etc, slavery can occur in the descending order, and not in the inverse order. As for example a *Kāshatriya* can be a slave of a *Brahmana*, and not of a *Vaiśya* etc. This, moreover, has application to others than those who have been apostates from asceticism. Since *Narada*<sup>1</sup> has stated "In the inverse order of the *varṇas* slavery is not ordained, excepting in the case of those who violate their own peculiar duties. Slavery has been regarded as analogous to the condition of a wife. Both these clauses viz. beginning with *varaṇāśa* and *pravrajyāśāśa* have application to others than a *Brahmana*. For<sup>2</sup> 'Where (the members of) the three

"varnas of the twice-born class become apostates from asceticism, the king  
"should cause the *Brāhmaṇa* to be banished, and reduce to slavery the  
"Kṣatriya and the Vaiśyas." The expression *Kṣatratvit*, the Kṣatriya  
"and the Vaisya" is a collective dual compound (182-183).

### Śūlapāṇi

#### Yājñavalkya, Verse 183

Those who become apostates, i. e. have fallen off from the vow of  
asceticism, &c., and being of the *Kṣatriya*, *Vaiśya* or *Sūdra* varnas  
become the slaves of the Kṣatriya King. This status of slavery is,  
moreover, in the descending order, and not in the ascending order. A  
Brāhmaṇa can never be the slave of a Kṣatriya. *Aśvaya Kātyāyana* :  
"Among the three *Varnas*, there can never be a slavery for a *Vipra*; even  
"though of the same *varna*, a *vipra* should never be made a slave" (183)

The Author mentions the duties of an apprentice

#### Yājñavalkya, Verse 184

Though he have acquired his art, the apprentice must remain in his  
master's house during the period stipulated, receiving his subsistence from  
the teacher, and giving to him the proceeds thereof.

*Mitākṣharā*:—*Anuvāsi*, an apprentice, vaset, must remain, *gurorgṛhe*,  
in the house of the master, *kṛtakālam*, during the stipulated period, i. e.  
for as long a period as may have been fixed under an agreement, e. g.  
thus, "I shall reside in your house for a period of four years for  
"learning medicine or any other art &c." and even when he has  
acquired the desired lore, even before the (expiration of) four years.

How should he remain? *Gururāptabhojanaḥ*, receiving his subsistence  
from the teacher, he who has obtained his food from his teacher—  
a person of such a description. *Tatphalapradaḥ*, giving to him the  
proceeds thereof, he who offers to the teacher the proceeds of it, i. e.,  
of the art—thus he should reside.

Even a special rule has been indicated here by Nārada: "If one  
"wishes to be initiated into the art of his own  
"craft, with the sanction of his relations, he may  
"go and live with a teacher, after having fixed the  
"duration (of his apprenticeship) (16). The master shall teach

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"him, feeding him at his own house. He must not employ him in  
 "work of a different description, and must treat him like a son (17). If  
 "one forsakes a master, who instructs him and whose character is un-  
 "exceptionable, he shall be compelled by force to remain (at his  
 "master's house), such a one makes himself liable for a corporal 5  
 "punishment and imprisonment (18). Even though his course of in-  
 "struction be completed, an apprentice must continue to reside at  
 "the house of his master, untill (the expiration of) the fixed period;  
 "whatever work he may do, while there, the profits thereof shall belong  
 "to the master (19). After he has acquired his art, at (the end<sup>d</sup> of) 10  
 "the stipulated period, the apprentice shall reward<sup>d</sup> his master plenti-  
 "fully, and return home, after having obtained leave from him (20)".

The word *Vadha*, 'Corporal punishment', here is used in the sense  
 of 'beating', having regard to the trifling nature of the fault

Thus ends the Chapter on Breach of Contract of Service.

15

### Vīramśtreḍaya

After having stated the rules relating to the slaves, the Author  
 states the rules relating to apprentices

Yājñavalkya, Verse 184

'In your house, I 'all stay for such a period,' thus having made 20  
 i. e. fixed a period, at the residence of the teacher, *Kṛtasilpāpī*

1. *अप्यत्र*—who has not been found fault with, as having been concerned in  
 any moral sin or legal crime

2. *ततः* when the time fixed for his apprenticeship ends *Asahāya* and  
*Bālabhātta*

3. Dr Jolly translates in this manner According to the interpretation of  
*Bālabhātta*, *अप्यत्र* would only mean a special part of worship i. e. going round  
 the object of worship with folded hands For he interprets *अप्यत्र* as *अप्यत्र*  
 and with that view the literal meaning of *अप्यत्र* may not have any force The  
 reader will note that *Bālabhātta*'s interpretation is the one which will strike  
 every one having in mind the sense ordinarily conveyed by *अप्यत्र*

' though he have acquired his art,' i. e. even when he has secured the art, still, the *antēdśī*, 'apprentice', one who has received subsistence i. e. meals from the teacher, such a one should stay at his place paying back the fruct of that art as his fee. Any duty in excess of the  
 5 art, however, the apprentice should not be made to perform. So Nārada<sup>1</sup> says: "He must not put him to any other work; and "should treat him as a son " So also<sup>2</sup>. " If one forsakes a master "who instructs and whose character is unexceptionable, he shall be "compelled by force to remain (at his master's place), such a one makes  
 10 "himself amenable for a corporal punishment and imprisonment " Similarly<sup>3</sup>: " After he has acquired his art, at (the end of) the "stipulated period, the apprentice shall reward his master plentifully, "and return home, after having obtained leave from him "

15 Thus ends in the Commentary on Yājñavalkya the chapter called  
 the Breach of Contract of Service

### Sūlapāṭi

#### Yājñavalkya, Verse 184

*Antēdśī*, "an apprentice", a pupil of a particular kind, *Kṛtatīpāḥ*, 'who has acquired his art' : i. e. who has mastered the art of gold manufacture &c. such a one *Kṛtākālām*, 'for the stipulated period', having  
 20 obtained his meals from the teacher must reside in the house of the teacher alone. The receipts of the art such as the kinds of jewellery &c. he should offer to the preceptor (184)

Here ends the Chapter on Breach of Contract of Service

1 Ch. V 17

2 Ch. V 18

3 Ch. V 20

## CHAPTER XV.

## Transgression of a Compact.

Now is being described (the law regarding) the 'Transgression  
'of a Compact'. Its characteristics have been indicated by Nārada<sup>1</sup> through  
(a discussion of) its contrary : "The (general) rules settled among  
'Pāṇḍis<sup>2</sup>, Naigamas<sup>3</sup> and like others' is called a Compact (Samaya).  
'Non-Transgression' of such a compact thus gives rise to a Title of  
'Law known as Transgression of a Compact' Settlement of rules in  
accordance with the special<sup>4</sup> provision of law is a compact; the non-  
transgression of the same is non-breach is observance. When this is  
being transgressed, it gives rise to a Title of Law. This is the meaning

The Author states a rule by way of an introduction to the same  
Yājñavalkya, Verse 185

A king, having erected a building in the town, and having therein  
lodged Brāhmanas, versed in the<sup>5</sup> three Vedas provided<sup>6</sup> with livelihood,  
should say to them 'Protect your Dharma'.<sup>7</sup>

1 Ch X 1

2 Pikhadnis—i.e. Heretics—Kshapanakas i.e. the Buddhist or Jain mendicants, and others who do not accept the authority of the Vedas. See Mitākṣharā farther on Yajñ II 182 p 1226

3 Naigamas—traders and others. Those who regard the Veda as authority but only as the word of an Āpta i.e. the Pāsupatas and others. See Mitākṣharā on II 192

4 This is why Vijnāneśvare characterises this definition of Nārada as one given in a negative manner. *Apātarma* is the transgression of a compact (Samaya). Its 'non-transgression', i.e. performance, is *Anapātarma*, and a chapter of law which deals with the non-performance or transgression is a chapter entitled 'Transgression of a Compact' अनपितर्मन् when freely translated here, only means 'by its opposite'. It is in this way. The Chapter is headed 'Transgression of Compact', while the definition gives what is a 'Compact' and how it is maintained. Thus the subject of the 'transgression of a compact' is illustrated by a treatment of its opposite.

5 अनपितर्मन्—i.e. the particular provisions of the Dharma Śāstra. The Dharma or rule, as propounded in the Dharma-Śāstra bearing on special contracts or agreements.

6 i.e. the R̥g, Yajur, and Sāma. These are the three Vedas indicated by the expression *Trandya*.

7 i.e. after having properly endowed the institution with funds for the maintenance of persons acting there as for their payment &c. The meaning is that he should assign land, money, or the like for their maintenance, so that they may perform their duties without any interruption.

8 *Swadharmā*—i.e. the duties hanging upon self (Swa). The word *eva* (self) applies to all, and indicates the law, in general, holding among the people. The author declares here what should be done by the Brāhmanas thus enjoined.

Mitākṣharā —The king, in his town : *c.* in the fort or other place, having erected *sthānam* a building, *i. e.* a white house, and *tatra brāhmaṇān nyasya*, therein having lodged Brāhmanas, *i. e.* having appointed them there, and having provided that assemblage of Brāhmanas versed in the three Vedas, with livelihood *i. e.* having endowed them with land, gold &c should say to these Brāhmanas "May your own "*Dharma* be observed by you" *i. e.* the rules regarding the Varnas and Āśramas as dictated in the Vedas, and Smṛtis

#### Vīramitrodaya

10 Now the Author begins the treatment of the Chapter of Law called the "Transgression of a Compact "

#### Yājñavalkya, Verse 185

15 *Rājā*, 'the king', in his own town, having created *sthānam*, 'a place' such as a white house, *tatra Brāhmaṇān nyasya*, 'and having therein lodged Brāhmanas', *traiśudam*, 'those well versed in the three lores', *ṛtumat*, 'provided with livelihood' *i. e.* having made them rich and affluent in gold etc "May the duties of the Varnas and "Āśramas be looked after by you' thus should he say to them, *i. c.* appoint them to the task. By the use of the word *tu*, 'however,' is excluded the inauguration without provision for maintenance (185)

#### Sūlapāni

#### Yājñavalkya, Verse 195

25 The king having caused a building to be erected in his town, and having therein lodged Brāhmanas renowned for their learning and heredity, should make provision for maintenance proper for a married man, for one who is accomplished in the study of the three lores such as the *Rk* and the rest, should say to them thus: "You should protect your "*Dharma*" As says Brhaspati" "The king should watch *Vyāras* who are "Vedic scholars learned divines, and have maintained the sacred fire, and 30 "should provide maintenance for them They should perform for the "citizens their ordinary and special rites, as also performances for a particular objective, so also the expiatory and the auspicious ones, and declare 'a decision in doubtful cases' (185)

1 The four principal Varnas are the Brāhmaṇa *Aśvamedha*, *Vasiya* and *Sudra* (See Yājñavalkya *Acharādhyāya* Verse 10, also Ch IV) The *Āśramas* *i. e.* the paths of life are four *vi.* The *Brāhmacarya* or the life of a celibate student see Yājñ Acharya 32-50 *Gṛhasthya* or the life of a householder, after marriage, the *Vanaprastha* the life of a hermit, and the *Sannyāsa* or the life of an ascetic

The Author mentions the duties to be performed by these when so appointed

### Yājñavalkya, Verse 186

Without detriment to one's own *Dharma*, whatever customary law there may be, should also be carefully observed as also the duties imposed by the king. 5

Mītākṣharā:—Duties arising under any *custom*<sup>1</sup> such as the preservation of the pasture for cow, and of water, and the management of temples and the like, should also be carefully observed without (however) infringing the duties prescribed by the *S'ruti* and the *Smṛtis*. 10  
Similarly, the king, should also enforce, *nijadharmāviradbhaiva yaḥ sāmāyiko dbarmah*, such customary rules only as are not inconsistent with one's own *dharma*, e. g. 'meals should be provided for all travellers,' or the rule that "the horses and the like shall not be carried to the 'dominions of the enemy.'" 15

### Vīramitradaya

Thus having been appointed, what should be their duty? So the Author says

### Yājñavalkya, Verse 186

*Yaḥ sāmāyiko*, 'whatever customary', i. e. in the form of the pasturing of cows, the preservation of temples etc. and by reason of the agreement the duties resulting from the King's ordinances caused by the cowherds etc. such also as, 'the horses and the like should not be taken over into 'the enemy's circle', and such as, 'in my kingdom, it should be so arranged 'that guests should not be without having a meal', and the like com- 20  
mandments issued by the king by his own desire, that too should be preserved i. e. looked after, by the *Brāhmaṇas* who have been appointed with the direction 'may you preserve our own laws'. By the use of the word *tu*, 'however', the Author excludes such customary rule as is 25  
opposed to one's laws. 30

By the use of the word *apt*, 'also', is included obligatory compacts stated in this text of Bṛhaspati<sup>2</sup>: "A compact formed among villagers, 30

1. *Sāmāyika* may either mean a compact, agreement, or a custom or usage, which is nothing but a course of conduct followed by a tacit agreement.

2. Ch. XVII. 2.

- “companies (of artisans), and associations (which) is (called) an agree-  
 “ment—such (an agreement) must be observed both in times of  
 “distress and for acts of piety also”, and in addition to the one establish-  
 ed by the King or his officers. By the use of the word *cha*, ‘as also’, the  
 5 Author includes what is authorised by the King (186)

## Sūlapāni

## Yājñavalkya Verse 186

- The rule which has been fixed by a compact which is not in conflict  
 with one's own *Dharma*, as also that made by the king, that also must be  
 10 observed. So also Brhaspati “Without detriment to established rules  
 ‘whatever royal command has been issued, that itself must be followed  
 “under the king's orders” (186)

Having thus stated that a ‘Customary rule,’ should be observed,  
 the Author mentions a penalty for its infringement

## 15 Yājñavalkya Verse 187

He who embezzles the property of a *gana*, as also he who violates  
 their usage, the king should deprive such a one of all his effects and banish  
 him from his realm

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- Mātākṣarā —Yah, *he*, moreover, who misappropriates the property  
 of a *gana* : *e* property pertaining to any guild or  
 20 Penalty for violat- association of villagers *saṃvit*, a *customary rule*, is  
 ing a customary Rule a compact, either made by an association or by  
 the king. He who *langhayat*, *violates*, *e.* transgresses these, of such a  
 man, the whole property should be taken away, and the king, *vipravâs-*  
 25 *ayat*, *should banish* : *e* expel him, *svarâshirât*, *from his realm*. This  
 penalty, moreover, should be administered in cases of aggravated  
 offences or the like

- In the case of petty offences, however, any of the four penalties,  
 viz. banishment, or a fine of four *śuarnas*, six *nishikas*, or a hundred  
 30 silver coins, may be fixed by regard to the caste and the capacity (of  
 the offender) as propounded by *Manu* ‘If a man belonging to a cor-  
 “poration inhabiting a village or a district, after solemnly swearing



"to a compact, break it through avarice, (the king) shall banish him  
"from his realm (219) And having imprisoned such a breaker of a  
"compact, he shall compel him to pay, four *swarnas*, six *nishkas*, and  
"one hundred silver (coins) (220)'

**Vīramīradaya**

5

The Author states the penalty for a transgression of such a compact

**Yājñavalkya, Verse 187**

The meaning is that in the case of an infingement, the King should  
deprive him of the entirety of his property and expel him. Here in the  
interest of brevity of the composition should be understood as the  
statement of the penalty for one taking away the property of the  
*gana* (association) 10

This penalty, moreover, is to be observed in the case of an aggra-  
vated form of offence. In the case of a petty offence, however, any  
one of the penalties mentioned by *Manu*<sup>1</sup> may be fixed by regard to 15  
the caste, capacity and the like viz "If a man belonging to a corpora-  
"tion inhabiting a village or a district, after solemnly swearing to a com-  
"pact, break it through avarice, the king shall banish him from his realm,  
'(219) And having imprisoned such a breaker of a compact, he shall  
"compel him to pay, four *swarnas*, six *nishkas*, and one hundred silver 20  
"coins (220)" (187)

**Sūlapānd**

**Yājñavalkya Verse 187**

He who embezzles the common property of an association as also one  
who transgresses the terms of a compact such a one should be deprived of 25  
his entire property, and the King should expel him from the kingdom (187)

Thus they should act, the Author says

**Yājñavalkya, Verse 188 (1)**

The directions given by the advisers of the association should be ob-  
served by all 30

**Mitākṣharā** — Among the members those who are competent to  
advise as to the interests of the Associations, the directions given by  
these should be followed by others who are incorporated as members

Otherwise there is penalty; so the Author says  
Yājñavalkya, Verse 138 (2)

There, he who acts contrary, shall be compelled to pay the first  
amercement.

- 5 Mitākṣharâ:—He, however, from among the members, who acts  
obstructively to the directions of one who advises as to the interests  
of the Association—such a man—must indeed be punished by the  
king with the first amercement.

Vīramitrodaya

- 10 A rule established by a village association or the like must not be  
transgressed, as is the case with a rule fixed by the king; so the Author  
says

Yājñavalkya, Verse 138

- 15 Those who declare something for the benefit of the public such as  
e.g. the construction of a bridge etc. must be obeyed by all in regard to  
the advice of these declared in this manner. He, moreover, who  
in such a case acts contrary i. e. is opposed, shall be compelled to pay  
the penalty for the first amercement (138).

Śūlaspāṇi

- 20 Yājñavalkya, Verse 138

The members of an association, such as the village guilds, &c. should  
follow the directions of the advisers of the association, be they two or three.  
He, moreover, who acts contrary to it should be compelled to pay the first  
amerement (138)

- 25 How should the king in this manner behave towards the members  
of an Association? So the Author says

Yājñavalkya, Verse 139

- Those assembled for the affairs of the Association, let the king dismiss,  
when their business is finished, after honouring them with gifts, honour,  
and expressions of civility.

- 30 Mitākṣharâ:—Such members of the Association as may have  
approached the king for a purpose of the association, the king should  
dismiss after pleasing them by means of gifts, honour, and expres-  
sions of civilities, after they have finished their business.

**Vīramitrodaya**

In regard to those who execute the behests of these, the Author states the duty of the king

**Yājñavalkya, Verse 189**

Those who have come to him in connection with a business in the interest of an association, after the completion of their business, the king should favour all of them with gifts, cordial reception and honours, and then dismiss (189) 5

**Sūtapāni**

**Yājñavalkya Verse 189**

Those who have arrived in connection with the business of an Association the king should honour with presents, honours and cordial reception (189) 10

The Author mentions a rule for one who appropriates what is given to the Association

**Yājñavalkya, Verse 190**

Whatever a man who is sent for the business of an Association receives, let him deliver it. He should be compelled to pay eleven fold if he does not himself deliver. 15

Mitākshara —He who, when deputed to wait upon the king on a business of the Association whatever he receives, such as gold, dress &c., all that he must offer unsaved to the Committee of the Association. Otherwise, he shall be made to pay a fine equal to eleven times the property obtained (by him). 20

**Vīramitrodaya**

When all do not go near the King for the business of the association, but only one deputed by these all, then how can there be the honouring of all? So the Author says 25

**Yājñavalkya, Verse 190**

When any one is deputed for a business in the interests of the association, whatever he obtains from the king, that he should distribute among all. When he does not so make over, then he should be compelled by the king to pay elevenfold of what was given. For the idea is that the honour done to the one was itself the honour for all (190) 30

**Sūtapāni**

**Yājñavalkya Verse 190**

One who has been deputed for the business of the association should bring and tender whatever money he receives. If he does not give, he should be compelled to pay the same eleven times (190) 30

The members of the advising body should be of a particular description. So the Author says

**Yājñavalkya, Verse 191**

Men knowing Dharma, pure, unavaricious, should be commissioned to consider the business. The directions of these,—the advisers of the general body,—must be executed.

Mitākṣharā:—Dharmajñā, men knowing the Dharma, as laid down in the *Śruti* and the *Smṛtis*, pure internally and externally, un-avaricious for any pecuniary gain, should be commissioned as members of the deliberative assembly. Their directions must be executed by others. This rule is again repeated as an indication of (special) regard (therefor.).

**Vīramitrodaya**

**Yājñavalkya, Verse 191**

Those well-versed in the rules of the *Śrauta* and *Smṛita* performances, possessing internal and external purity, devoid of avariciousness, thoughtful of the interests of the association in their transactions, such should be invested by the king. The meaning is that the non-observance of the advice of these benefactors of the association necessarily leading to punishment, their words should be followed by all (191).

**Śūlpāṇi**

**Yājñavalkya, Verse 191**

Versed in the import of the Vedas, pure in monetary affairs, not avaricious, should be the advisers of the association in regard to their transactions. The opinion of these who give sound advice should be followed. The repetition again of this text is with the object of mentioning special acquisitions such as the knowledge of the vedas, etc. (191)

Now, with a view to extend the rules laid down for the Scholars in three Vedas, to *Śrenis* etc., the Author says

**Yājñavalkya, Verse 192**

This is the rule for the associations of *Śrenis*, *Naigamas*, *Pākhandis*, and *Ganas*. The king should preserve their peculiarities, and conserve their rules of old.

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Mitākṣharā:—*Śrenis* or bodies of artisans are those who subsist by the manufacture of the same commodity. *Naigamas*, such as the

1 These are the same as referred to in Verse 188 above

Pāsupatas and others, are those who accept the authority of the Vedas (simply) as composed by an Apte. The *Pakhandins*, such as *Najjavat*, *Sangatas*, etc. are those who do not even admit the authority of the Vedas. A *Gana* is a body of men living by the same profession such as the soldiers, and the like. *Eshām* for these four varieties of men this is the rule: *as laid down 112*, "Without detriment to one's own *"Dharma* etc." Moreover, let the king preserve their peculiar rules of conduct, and also conserve their hereditary craft.

Here ends the Chapter on the Transgression of a Compact.

#### Varamitrodaya

The Author extends the law laid down for the *Trandiyas*, to guilds etc.

#### Yājñavalkya Verse 193

The combination of people maintaining themselves by (the sale of) one kind of merchandise is called the *Sreni*, *Najagamah*, the citizens, *Pakhandinah* not accepting the Vedas as authoritative, *Ganah* the guild of persons pursuing one profession such as the manufacturer of arms etc. i. e. the rule stated (in verse 186) above: "without detriment to one's own *dharma* &c." By the use of the word *apte*, 'also', we included the king's officers.

In connection with the subject, the Author states the duty of the king in regard to these. He should preserve their rules as established of old. By the first *cha*, 'and', are included the *Brahmanas* spoken of before. By the second *cha* is added that he should fix rules for those for whom no rules exist (192).

Thus in the commentary of Yājñavalkya ends the Chapter on the Transgression of a Compact.

#### Sūlāpāni

#### Yājñavalkya, Verse 194

*Śicanyah*, such as the picture makers, *rajagan du* tradesmen and various other citizens. *Pitshapinah* i.e. apostate from asceticism. *Ganah* such as an association of *Brahmanas*. Of these also this very same *re* as stated above is the rule. The king should preserve their peculiarities and conserve the rules as established as of old (192).

Thus ends the Chapter on the Transgression of a Compact.

1 According to the tradition the Vedas are the direct revelations of the Divine Word made to the seers who simply transmitted what they saw. There are some schools of thinkers, who do not accept this origin of the Vedas but maintain that they are the compositions of revered sages. They accept the authority of the Vedas, not as a Divine Word revealed and transmitted through the seers, but simply as a work of high authority entitled to respect and weight, as having been composed by men of vast learning and accomplishment.

2 Varieties of *Eutika* *vats*. These do not accept the authority of the Vedas at all. 3 *re* *Yajñ* II 186. 4 See Verse 20 above pp 746-747.

## CHAPTER XVI

## On the Non-payment of Wages

Now begins the chapter called the non-payment of Wages, a title of law. Its characteristics have been stated by Nārada<sup>1</sup>: "A series of  
 5 " rules ( will be ) stated ( next ) for the payment and non payment of  
 " wages of labourers. It is termed 'Non payment of Wages' a title  
 " of law." The meaning of this ( is this ) : The chapter of law wherein  
 the rules of payment and non payment of wages of the labourers have  
 been stated ( is ) in the stanzas following, is known as the chapter on  
 10 the ' Non payment of Wages.'

There the Author mentions ( a rule as to ) a decision

Yājñavalkya, Verse 193

One who having received his wages, abandons the work, must pay  
 twice. If none is received, he shall be made to pay an equal amount. The  
 15 implements shall be preserved by the servants

Mittākṣharā — One, by whom the wages had been received, if he aban-  
 dons : & do not perform the work which he had undertaken, should pay  
 twice the amount of wages to the owner. When, however, he abandons  
 a task which he had agreed to do, when he had not received any  
 20 wages, then he should be made to pay an equal amount of as much as  
 was fixed as wages, and not a double.

Or, ( the passage may be interpreted<sup>2</sup> thus ) . he shall be forcibly  
 compelled to perform his work, after payment to him of the wages  
 promised; as directed by the following text of Nārada<sup>3</sup> " One, who  
 25 " does not perform a work after having agreed to do it, should be  
 " forcibly compelled to do it, after paying him his wages."

The rule as to wages also, has been stated by the same Sage<sup>4</sup> " Let  
 " the master, for whom work is performed, pay wages to the servants  
 " hired ( by him ) according to their agreement, at the beginning, at the  
 30 " middle, or at the end, as may have been settled between them "

1 Ch VI 1

2 Viṣṇūśeṣvara proposes this interpretation of the text, as an alternative  
 course suggested by the text of Nārada

3 Ch VI 5

4 Ch VI 2

The servants also must preserve to the best of their ability implements of husbandry, such as the lute, and the rope of the plough, and like others otherwise there would not be any ploughing etc

### Viramitrodaya

"A series of rules are stated in connection with the payment and non payment of wages of labourers That is termed "Non payment of wages — a title of law, thus stated in this text of Nārada<sup>1</sup> the Author treats of the title of law known as 'the Non payment of wages

### Yājñavalkya Verse 101

*Gṛhṭaveśanah*, "One by whom wages had been received, such a labourer having undertaken, *karma tyajan*, as also a contractor, if he abandon the work, *samam*, 'an equal amount', i.e. equal to the amount of wages settled, such amount he 'should be compelled to pay *dāpyah*, by the king And under compulsion he should be made to perform the work after paying him the wages, as stated by Nārada<sup>2</sup> "One who does not perform the work after having agreed to do it, 'should be forcibly compelled to perform after paying him his wages This for him who after having commenced, does not (continue to) perform

Where there is no commencement, however, the rule is stated by Manu<sup>3</sup> "A labourer, who without being ill, out of arrogance does "not perform the work as agreed to, shall be fined eight *Kṛṣṇālas*, and "no wages shall be paid to him

By the word 'abandons', the penalty has been stated, where the abandonment of the work is of his own making otherwise, however, "if he abandons on account of a fault of the owner, he should get for as "much as he has performed, the rule thus stated by Nārada should be observed.

The labourer also should preserve the implements of the owner such as, the whip, the plough etc The meaning is that if it is not properly looked after and preserved the lost article should be restored to the owner On whatever occasion any particular wage has been agreed upon between the owner and the labourer that kind of wages on that occasion should be paid This is clear and therefore, may be overlooked (193)

## Sūlapāṇi

## Yājñavalkya, Verse 193

- One who has accepted wages for the performance of a work, if he abandons that work shall pay double the wages. If the wages have not been received he may be made to pay equal. *Bhrtyaśu*, 'by the servants' i.e. *Bhrtyakāṣṭh* i.e. 'servants on wages'. The implements such as the plough, bridle etc. should be preserved. (193)

The Author mentions a rule as to one who causes a work to be performed without determining the wages.

## 10 Yājñavalkya, Verse 194

He, however, should be made to pay by the rule of the land a tenth part of the (proceeds of) trade, cattle, or crop, who without settling the wages causes work to be done.

- Mitakīṣarā* — That master, however, i.e., a grocer, an owner of cows, or an agriculturist, who even without clearly settling the wages causes work to be done by a hired servant, whatever (profits) may be obtained from that work, i.e. from the trade, cattle, or agriculture, the tenth portion of that should be caused to be paid to the hired servant, *Mahikṣatā*, by the ruler of the the land, i.e. by the king.

## 20 Vīramitrodaya

When the labourer is working without any wages being determined, what should be paid to the labourer? So the Author says

## Yājñavalkya, Verse 194

- That master, however, who causes work to be performed such as trade and the like without the wages being determined, such a one should be made by the king to pay to the labourer a tenth part of the profit of trade, cattle, or agriculture. Thus, moreover, is with reference to a cultivator of the soil, vide the text of *Brhaspati* viz. "A third or fifth shall a cultivator of the soil take as his share. One who is given food and clothing shall take a fifth of the plough. A third share in the absence of food or clothing. (194)

## Sūlapāṇi

## Yājñavalkya, Verse 194

- He moreover, who causes work to be done even without determining the wages such a one should be made to pay by the king a tenth part of the income from trade, cattle, and harvest. (194)



The Author mentions a rule for one who does something with out an order

### Yājñavalkya Verse 195

When one disregards the place and the time as also where one otherwise causes a reduction in profits in such a case the will of the master (shall prevail), but more shall be paid if more be made 5

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Mitakshara — A hired servant, however who does not sell a commodity at the proper time<sup>1</sup> or in a proper place and thus disregards these through insolence or the like or one who at the same time or place brings in less profit than what would have been reaped by an extensive sale (of the merchandise) in the case of such a servant, the will of the master shall prevail in the matter of payment of wages as much may he wish so much should he pay and not the entire wages 10

When, however more profits are made by reason of a special knowledge as to time and place then an amount exceeding that fixed before, should be paid by the master to the labourer 15

### Vasmitrodaya

When the owner suffers a loss in the profit on account of the fault of the labourer the Author mentions the diminution in the wages

### Yājñavalkya Verse 195

That labourer, however who transgresses the time and the place appropriate for trade or cultivation and does not make the sale cultivation &c is guilty of transgression as also he who otherwise makes a profit by spending too much of the master's property *taira* for such &c in regard to such a labourer *sadmina*, of the master in regard to the payment of wages *chhandat* will &c option The meaning is as much as the master wishes, so much should he pay, and not the entirety of the wages 20

1 The meaning is this though he see a proper time and place for the sale of the commodity if the factor through insolence or the like can do not sell it or if he accept less profit thinking that the time and place would cause him much trouble let the master pay him what wages he pleases not the full price Cole brooke Digest

When, moreover, by reason of his special knowledge of the place and the season the labourer makes a greater profit, then more wages should be paid in addition to the tenth mentioned in the rule. By the first use of the word *cha* is included the special, particular etc. about the purchaser, and by the second use of the word *cha* the loss in the original capital (195).

### Śūlapāṇi

#### Yājñavalkya, Verse 195

He, however, who carries the load, etc., beyond the limit of the region other than the one which has been fixed, or does extra work beyond the fixed time, or performs more work than the nature of that fixed, in such cases it is at the option of the owner. In the case of more, however, more must necessarily be paid. For less, less; and hence also the option (195).

The Author mentions a rule as to the payment of wages for task accomplished by several workmen

#### Yājñavalkya, Verse 196

As much work a man does, so much will be his wages; if it cannot be accomplished by both, the wages should be paid for the work done according to the agreement.

Mitākṣarā:—When, moreover, even a single task for which the wages have been fixed, (and the performance of) which was (undertaken and) commenced, but which, on account of illness or any other impediment was found to be impossible to be accomplished even by both—by the use of the word 'even' (is implied) "even by many" i. e. if it could be finished, then *yo yāva karma karoti, as much work labourer does, tāva, so much, i. e. proportionately to the work done by him, as determined upon by an arbitrator, should be paid to him as his *velasam*, wages, and not an equal amount. It should not be supposed that no payment may be made, on the ground that there was no agreement for payment of wages for the several parts of the work.*

If, however, the work be accomplished by both; i. e. be finished then as much as was agreed upon i. e. stipulated for, so much should be paid to both; and not the entire amount of wages to each, nor should the payment be according to the work after determining it.

## Viramitrodaya

The Author states a rule in regard to work to be performed by several labourers

## Yājñavalkya, Verse 196

When one ( piece of ) work is completed by being performed by two or more contributing more or less labour, then by regard to the less or more labour of each the wages should be distributed among them, when it cannot be accomplished by two or more The meaning of the word *api* is that when it is not accomplished on account of the fault of the second labourer If the work is accomplished the contract should be completed as agreed upon

The wages agreed upon to be paid for a particular performance are to be paid only on the completion of the work and the wages are not to be paid for only a part performed The meaning of the substance is that the wages are not to be paid distributively to each individual labourer, but are to be paid collectively in a single lot to all together or by dividing it among them (196)

## Sûlapāni

## Yājñavalkya, Verse 196

He, who performs as much work his wages should be paid by regard to that work, if that work cannot be accomplished by both If, however, it can be accomplished and has been finished wages should be paid as agreed upon (196)

The Author mentions a rule regarding a Soldier and a Carrier

## Yājñavalkya, Verse 197

A Carrier shall be compelled to make good a vessel which has perished except it be by (the act of) God or the king One who creates an obstruction at the time of starting shall be made to pay twice the (amount of) wages.

Mitāksharâ—A vessel regarding which no calamity has arisen owing to ( the act of ) God or the king, if such a vessel be destroyed by a carrier through his folly then he should be made to pay for such a vessel according to the loss (caused) Nārada says the same "If a vessel be damaged on account of the fault of the Carrier, he shall be compelled to make good whatever loss may have been caused, excepting such as may be due to an Act of God or the king"

- He, moreover, who having before undertaken the service of carrying one who intended to start on an auspicious day for a marriage or other similar purpose, creates an impediment at the time of starting by saying at that time that he would not do the work then he shall be fined double the amount of the wages fixed since an obstruction was raised to a highly auspicious undertaking

### Śūlapāni

#### Yājñavalkya Verse 197

- With the exception of anything due to the (act of) king or God, if through the fault of the carrier any goods or property of the trader such as saffron etc perish then the carrier entrusted with its transport should be made to pay One moreover, who creates an impediment at the time of starting out (on a journey) shall be made to pay twice the amount of the wages (197)

#### Yājñavalkya, Verse 198

- (If he declines) after setting out, he shall be fined a seventh part, a fourth if (he desert) on the way, he shall forfeit the entire amount of wages if (he declines) in the midway so also one who causes a work to be abandoned

- Mitākṣharā—Moreover, *prakrānte*, after setting out, i.e. after a start had (once) been made, he who gives up a task undertaken by himself,—such a one—should be compelled to pay a seventh part of the wages agreed upon

- It may be said indeed in this very connection by the text<sup>1</sup> "one who creates an obstruction at the time of starting &c" the payment of double the amount of wages has just before been stated, and now, a seventh part, thus there is a contradiction

- The answer The answer to this is that for a man who abandons a work at a time when another servant may be procured, the seventh part (is the fine), while for one who gives up at the auspicious moment of starting itself, a fine of double the amount of wages (is prescribed), thus there is no contradiction He, moreover, who abandons pathi on the way, i.e. after a start was made and the journey had once been commenced,—such a one should be fined a fourth part of the wages He moreover, who deserts in the midway shall be fined the entire amount of wages

<sup>1</sup> Yajñ II 197 (above)

He however, tyajakah, who causes the work to be abandoned, i.e. when the master compels a servant to stop work, when the latter was not giving it up such a one also (i.e. the master) shall be compelled to pay to the servant the seventh and other portions respectively regard being had to the place (where compulsion was caused) as stated before 5  
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This rule moreover, regards one who has not had any disease or a like calamity, i.e. the text of Manu<sup>1</sup> "A hired servant who not being ill, does not perform through insolence the work as agreed upon, shall be fined eight *Arśanāṣṭ*<sup>2</sup> and no wages shall be paid to him

When moreover after the disappearance of the disease or the like cause he makes good his undertaking taking into calculation the lapsed days then indeed he gets his wages i.e. the text of Manu<sup>3</sup> If however one who was ill after recovery performs his work according to the original agreement he shall indeed receive his wages even after (the lapse of) a very long time. 10 15

When however one after he is cured of the disease being perfectly at ease through idleness or like other cause does not do the work commenced even to a small extent nor gets it finished by another to such a one no wages shall be paid As says Manu<sup>4</sup> But if he whether sick or well does not (perform or) cause to be performed (by others) his work according to his agreement, the wages for that work shall not be given to him even if (it be only) slightly "incomplete 20

Here ends the Chapter on the Non payment of Wages.

#### Vīramītrodaya

It has been stated above that "the implements shall be preserved by the servants There for not preserving or for a prejudicial performance the Author mentions the penalty 25

Yājñavalkya Verses 197-198

Without the act of king or God where a vessel has perished owing to the ignorance of the carrier then the carrier must be compelled to pay 30

1 Ch. VIII. 215

2 The Guṇja berry : i.e. of gold silver or copper according as the case may be (Medhatithi) of gold (Kulbaka)

3 Ch. VIII. 216

4 Ch. VIII. 217

By the use of the word, "*tu*," the Author excludes what has perished by the act of king or God.

On a day fixed for starting for a marriage or a like purpose the labourer who raises obstructions and when another labourer is not available, shall be made to pay double the amount of wages by compulsion i.e. by beating and any other mode causing extreme pain. By the use of the word "*eva*" are excluded the performance of work at any other time. Then by the use of the word "*cha*" are included those who cause considerable delay in half the way (197)

When a work has been commenced and another labourer is available one leaving the work should be made to pay a seventh part, on the way i.e. in midway in one's own country, one abandoning (shall pay) a fourth part, and one abandoning at half the journey, the whole of the wages should be made to pay. He also who by mischievous counsel causes a workman to give up work such a one also should be compelled to pay double the amount of wages.

The words '*api*' and '*cha*' are for excluding any option. In the matter of a cumulative punishment Manu<sup>1</sup> thus "If ill, when he reco-  
'vers, he should perform as originally agreed upon such a one will  
" certainly receive his wages even after a very long time. The mean-  
ing is that the days of interruption should be counted and the work  
should be completed within these days. If, however, when he is in  
perfect health, but does not perform work through idleness or the like,  
then he does not get the wages, *vide* the text of Manu<sup>2</sup>. "But  
"when whether sick or well he does not cause to be performed the work,  
'the wages for that work shall not be given to him although it is short  
" by a small portion. This is the substance.

Here ends the Chapter on Non payment of Wages

#### Sūlapāṇi

#### Yājñavalkya Verse 198

At the time of commencing a journey he who even at the (starting) place gives up work the person abandoning shall be compelled to pay a seventh part of the wages. The rest is clear (198)

## CHAPTER XVII

## On Gambling and Betting on Animals

Now commences the Chapter of law called "Gambling and Betting on Animals" Its characteristics have been mentioned by Nārada<sup>1</sup>  
 "Dishonest gambling with dice, small slices of leather, little staves  
 "of ivory, or like others and also betting on birds form a title of 5  
 'law called Gambling and Betting on Animals' *Alakṣa* means dice  
*Bradhu* is a small piece of leather, *Saṭaka*—small staves of ivory  
 &c made long and squared By the use of the term *Ādyā*, 'Or like  
 other,' are included other instruments of enjoyment such as the 10  
 play having the four components<sup>2</sup> of an army division, including the  
 elephant, the horse, the chariot and the file Gambling : a play  
 ing by means of these inanimate things is preceded by a bet Similarly  
 that play by means of birds such as a cock a pigeon and the  
 like--and by the use of the word 'and', *cha*, wrestlers, rams, buffalos 15  
 etc.--which is initiated by a bet, both of these give rise to a title of  
 law called 'Gambling and Betting on Animals' That has been  
 stated by Manu<sup>3</sup> 'That which is arranged by (the use of) inanimate  
 "things is called among men Gambling (*Dyūta*), when however  
 "the play is enjoyed by means of animate beings it should be known 20  
 'as Betting (*Samādayah*)

The Author mentions the (scale of) remuneration of a keeper of the Gambling Hall

## Yājñavalkya, Verse 199

In a bet, when the wager is a hundred (fold) the keeper of a gambling house shall take five per cent from a gamester<sup>4</sup>, and ten per cent from the others 25

*Mitākṣharā* --The stake determined by mutual agreement of the gamblers is called a 'bet', *glabāh* In such a bet one who has (stipulated to have) a hundred in reference to it : a an increase which is 30

1 Ch. XVI 1

2 An army is generally described as having four parts viz the elephant, the horse the chariot and the foot *Chaturanga* is a kind of chess in which these four parts are represented

3 Ch. VIII 223

4 i.e. the Keeper of a gambling house

of a higher proportion than a hundred fold is an increase by hundred fold. From such a gamester, *Sabbikah*, the keeper of the hall, may take five per cent for his own maintenance. A hundred in which five *panas* is the increase is a 'five per cent', *pañchakam salam*. The affix *Kan* (in *Satakam*) is used under the rule 'These affixes (mentioned in Pāṇini V I upto rule 17) have also the sense of 'an interest, or rent, or a profit, or a tax, or a bribe given thereby' or in 'that'. The meaning is that he should take a twentieth part (of the gains) of the winner of the bet.

- 10 He to whom belongs the house for the residence of gamesters, is a *Sabbikah* keeper of the gambling house. One who makes provision for all the instruments of gambling such as dice etc., and maintains himself with the amount received therefrom is called a *Sahāpati*. From any other, moreover, & c from a gamester who has not laid a  
15 wager upto a hundred (fold), *dasakam salam*, ten per cent, he should take a tenth part of the amount won. This is the import.

## Sūlapant

## Yājñavalkya Verse 199

- 20 At the time of the gambling etc. where a small increment is recovered from the gambler from that per hundred from the clever gambler the officer of the gambling house should take five per cent. Where it has not been taken then ten per cent from the profit. (199)

What should be done by a keeper who has thus been provided for? So the Author says

- 25 Yājñavalkya Verse 200

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He being well protected, shall pay a portion to the king as fixed. He shall recover the amount of the wager, and pay the winner, and being ever patient shall give a true decision,

- 30 Mitāksharā —The Officer of the gambling house, for whom provision has thus been made *sah*, he, being protected from rogues and gamesters by the king—shall pay to the king a portion as agreed upon. Similarly he should recover the amount of the wages, & c should recover it from the losing party, by accepting a pledge or by



arrest etc And having recovered that amount, he the keeper should pay it to the winner : e the successful party Also, being (ever) patient, he should always declare a true decision to the gamblers That has been stated by, Nirada! "The master of the gaming house shall arrange the game, and pay the stakes won therein" 5

Sūlapāni

Yājñavalkya, Verse 200

The keeper of the house when properly protected by the king shall pay to the king a portion as arranged being always patient he shall take from the gambler the amount won And to the winner also he should pay the amount sticking to the truth Brhaspati states a special rule 'One defeated in a secret game, or ignorant (of the rules) or (defeated) by (the use of) false dice or deceit though acquainted with the game shall be released, and one who has lost his entire wealth in a game shall not be compelled to give the whole of it (200) 15

When, however, the keeper is not able to make (the party) pay, the king should cause it to be paid So the Author says

Yājñavalkya, Verse 201

That which has been won publicly in an assembly of gamblers in a gaming house having a keeper where the (fixed) portion has been received by the king he shall compel the amount to be paid, but not otherwise 20

Mitākṣharā --Prasiddhe, publicly, and not in secret, in an assembly of gamblers having a keeper of a gaming house, and in the presence of the officer of gaming appointed by the king, and when the king's portion had been paid by the keeper, the king shall compel a dishonest gamester to pay the amount of the bet won regarding which there is no difference of opinion Anyathā otherwise, a bet won in secret, without a keeper and where the king's portion has not been paid, he shall not cause to be paid to winners 25

Sūlapāni

Yājñavalkya Verse 201

Where the king has received his own portion he shall compel the amount to be paid which has been won publicly in the house of gamblers in the presence of the game keeper and not otherwise (201) 30

The Author mentions the means for a decision when there is a dispute as to success or defeat

### Yājñavalkya, Verse 202 (1)

The Judges of the disputes (about gambling) as also the witnesses  
5 shall be (the gamblers) themselves

Mitāksharā —*Drahiṭārah*, the judges, of gambling should be *ta eva* themselves, *i e* the gamblers, *i e* should be appointed by the king. There the rule<sup>1</sup> that 'they should be accomplished by learning and study' &c does not hold. *Sakshmascha*, the witnesses also, in a bet  
10 should be selected from the gamblers themselves. The prohibitive rule<sup>2</sup> given in "A woman, a minor, an old man, a rogue &c" does not apply here

The Author mentions a penalty by way of prohibiting gambling in certain cases

### Yājñavalkya, Verses 202 (2)

Persons gambling with false dice or other instruments shall be branded and banished by the king.

Mitāksharā —Those who play with false dice or other instruments similarly prepared, for causing a deception *e g* by charmed jewels, charms or medicinal preparations and the like, these the king shall brand  
20 with a dog's or other mark and banish from the kingdom. A special rule has been mentioned by Nārada<sup>3</sup> as to banishment. 'The king shall "banish from the kingdom wicked men who play with false dice, "after a wreath of dice has been hung round their necks, for, that is  
25 'the punishment ordained for them.' Moreover, those texts of Manu<sup>4</sup> which prohibit gambling, *e g* "Whoever either gambles him-  
"self or bets or causes it (by others) all those the king shall punish  
"corporally, as also those *Siddhā* who assume the distinctive marks  
"of the twice-born' and others even these should be understood to  
30 apply to gambling with false dice, as also to gambling where there is no keeper nor the gambling officer of the State

1 See Yājñ II 2 p 3 above

2 *i e* in Yājñ II 70 p 851 above

3 Ch XVI 6

4 Dr Jolly's Edition gives a different reading *न निहोदयनमोक्षाय* 'shall drive out of the gaming house'

5 Ch IX 224

## Sūtapāni

## Yājñavalkya Verse 202

The judges of disputes regarding gambling as also the witnesses shall be (the gamblers) themselves. Persons gambling with false dice or fraudulent gamblers should be branded by the king and banished. 5  
As says Nārada: 'The king shall banish from the kingdom wicked men "who play with false dice, after a wreath of dice hung round their necks." For that is the punishment ordained for them' (202)

## Yājñavalkya, Verse 203 (1)

Gambling should be ordained under the supervision of a single officer, 10  
with a view to (use it as a means of) the detection of thieves.

Mitāksharā — Moreover, the gambling as discussed above should be ordained under a single supervision: i.e. one where the mouthpiece or the chief is one. The meaning is that it should be organised by the king under the supervision of an officer of the State. Taskarajñāna 15  
kāranāt with a view to the detection of thieves. Having kept in view the object of detecting thieves, as gamblers generally hail from those who amass wealth by theft, and so it should be placed under the supervision of one (officer) with a view to the detection of thieves.  
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The Author mentions a rule with a view to extend the laws of 20  
gambling to betting on animals.

## Yājñavalkya, Verse 203 (2)

This very law should be understood to apply in the case of betting by means of animate beings.

Mitāksharā — The law as to gambling as has been laid down 25  
above. In a bet when the wager is a hundred (fold) &c. that very law should be understood *pramādyāte* in the case of betting with animate beings, i.e. that which is made by means of wrestlers, rams, buffaloes and the like and which is called a *Samahāvayāh*.

Here ends the Chapter called Gambling and Betting on Animals. 30

## Viramitrodaya

'Now the Chapter of the law called 'Gambling and Betting on 35  
'Animals,' and as stated in the text of Manu: viz. "That which is arranged by (the use of) manumate things is called in this world 'gambling, *dyuta*, that, however, which is arranged by means of animate beings should be known as betting on animals, *samahāvayāh*, and divided into two parts, the author begins

## Yājñavalkya, Verses 199-203

The stake determined by the mutual agreement of the gamblers is called a "bet", *glāhaka*, in such a bet, in a hundred *1 c* by the measure of a hundred and increased, the keeper of the hall, *Sābhikah*, *1 c* the officer presiding the gambling may take five per hundred *1 c*. for a hundred of gold etc five of gold etc, from the clever and successful gambler who makes the bet. From any other, when the profit is less than a hundred, he should take ten per cent, that is the meaning. By the use of the word *tu* is excluded the recovery of five per cent from one who is defeated.

The keeper of the gambling house who has been protected by the king by the arrangement for his subsistence and by the warding off of attacks from others should pay to the king as fixed *1 c*. in the order as fixed, a portion from the amount of his acquisitions (199)

He should give the won bets to the winner. Afterwards at the place of the defeat he should himself recover *1 c* take, after recovering it. Truth-telling and patience, one who has these two. The meaning is (that) he should give a correct decision (200)

If, however, the keeper of the house is not able to recover, then it should be compelled by the king to be paid so the Author says '*prāptā* etc', 'recovered etc' where it has been obtained by the king publicly *1 c* not covertly in an assembly of the gamblers *1 c* in the company of the betters. In a place with a keeper attached to the house the king should compel it to be paid to the keeper. Or it should be construed thus *śhāne* "at the place *1 c* at the gambling place, the king should compel the keeper of the house to be paid. Otherwise, *1 c* where the king has not received a share, or in a secret assembly of the gamblers, or at a place not presided over by a keeper of the house, what has been won, the king need not compel to be paid (201)

In transactions relating to gambling, the judges *1 c* the persons entitled to give decisions, as well as the witnesses shall be (the gamblers). By the use of the word *eva* are excluded the absence of a fault indicated in the text<sup>1</sup> "women, minors, aged persons, gamblers" etc. Those who gamble with false dice etc *1 c* involving deceit or with fraudulent motives *1 c* with an intention to deceive, as also by means of gems, charms, or medicaments, such persons should be branded by the king and exiled. So says Nārada<sup>2</sup> "The king shall banish from the kingdom wicked men who play with false dice, after a wreath of dice has been hung around their necks, for, that is the punishment ordained for them. Thus in the text of Manu<sup>3</sup> "Whoever himself engages or causes others to engage, in gambling or betting on animals, all these, the king shall punish corporally, and also those Sudras who

"assume the distinctive marks of the twice-born, and of others are to be regarded as having a reference to those gamblers only who use false dice (202).

Where there is only one officer of the king viz the keeper of the (gambling) house as the mouth piece i. e. the principal officer, such gambling should be arranged with the object of finding out the thieves

The law as to gambling stated in the text<sup>1</sup> "in a bet when the "wager is of hundred etc., the Author extends to betting on animals—*Esha e etc*, 'thus same etc' (By means of) living beings such as wrestlers, rams etc., in a gambling which is to be carried on, known as the *samāhuaya* i. e. betting on animals, the very law as has been stated above, is to be understood. This is the meaning

Says Brhaspati<sup>2</sup> "When birds, rams, deer or other (animals) "are employed to fight against one another, after a wager has been "laid, it is called betting on animals.

"When any one is defeated in a prize fight between two animals, "the wager which has been laid there, shall be paid by the owner (of "the defeated animal) A wager shall be made in public, false gamblers "shall be punished Nārada<sup>3</sup> "If a man arranges a gambling which "has not been authorized by the king such a one shall not get the stake, "and moreover shall incur a penalty That which has been jokingly "made or which has not been reported to the king there also he shall "not get his stake, and he will also incur a penalty

Vishnu<sup>4</sup> "Those who use false dice in gaming shall have their "hands lopped off Those who resort to fraudulent practices in gaming "(shall lose) the fore finger and the thumb (199-203)

Thus in the commentary on Yājñavalkya ends  
the Chapter on Gambling and Betting on Animals

### Sūlapāni

Yājñavalkya Verse 203

This gambling should be caused to be presided over by a principal officer with a view to get information about thieves This same procedure should be understood to be in the case of betting with animals called *Samāhuaya*. When gambling is carried on by means of animals such as the ram, the cock etc with a stake on that is known as gambling with animals Although gambling has been forbidden by Manu<sup>5</sup> in the text

Whoever either gambles himself or bets or causes it (by others), all those "the king shall punish corporally as also those Śādras who assume the "distinctive marks of the twice born, still if a beginning is made anyhow this rule of the law has been stated

Thus ends the Chapter on Gambling and Betting on Animals.

## CHAPTER XVIII Of Abuse.

Now the Author introduces the law of Abuse. Its definition has been stated by Nārada<sup>1</sup> 'Abusive language, couched in offensive and  
 5 "violent terms regarding the native country, caste, family, and so  
 "forth (of a man), are termed 'Abuse'.' Offensive and violent language about a (man's) country &c. violent talk is an *Īra*, *Nyanga* is a disrespectful talk. Language which savours of both these, and which is also abusive and thus causes dismay, is called 'Abuse'  
 10 There, e g 'the natives of *Gāṇḍa* are fond of quarrelling', is (an instance of) an abuse regarding a country, 'The *Vipras* are an extremely covetous people', is (an instance of) an abuse regarding a caste, 'the members of the *Vṛāṇḍra* family are cruel in their acts' is (an instance of) an abuse regarding a family. By the use of the term  
 15 *Ādi*, 'and so forth', is also included violent language regarding learned men or men versed in crafts and the like used by means of abusing learning craft &c.

Of that, a three fold division has been laid down by Nārada as  
 20 *Nishthura* &c. with a view to (be of help in the) discrimination as to the punishments. The characteristics of these divisions also have been stated by the same Author<sup>2</sup> 'That, again, is divided into three species "according as it is *Ni* *lithura* (cruel), *Aśla* (indecent), or *Tura* (sharp).  
 "The punishment for each increases in severity respectively according to the nature of the insult offered (2) Abuse combined with  
 25 'reproaches should be regarded as *Nishthura* (cruel), abuse couched  
 "in insulting language is *Aśla* (indecent), the learned call an  
 'abuse *Tura* (sharp) by which a man is charged with an offence  
 'causing expulsion from caste (3)'. "I, upon you fool! you are  
 "a rascal", is (an instance of) an abuse combined with reproaches  
 30 Here insulting means ungentlemanly language, censurable—e g  
 (imputing) intercourse with a sister etc.—language savouring of such words is called an indecent abuse (*Aślam*). And violent language imputing an offence of a heinous nature e g "Thou art a drunkard", is an instance of an abuse called *Tura* (sharp).

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The Author states the penalty for an *Ātîla* (indecent) abuse  
Yājñavalkya, Verse 205

The king shall compel a man to pay a fine of Twenty-five *panas* who abuses another saying "I shall have intercourse with your mother or sister."

Mîtākṣharâ:—One abusing thus: "I shall have intercourse with your 'sister or mother', the king shall compel to pay a fine of twenty-five *panas* i. e. which consists of a twenty plus five *panas*.

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Sûtapâṇi

Yājñavalkya, Verse 205

*Pañcaviṃśatikam*, 'Twenty-five, i. e. which consists, of twenty-five *panas* The rest is plain. In some places the reading is 'or similarly a mother' (205).

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Having thus stated the rules for men of equal merits and *Varna*, the Author proceeds with a view to declare the law regarding men of varying merits

Yājñavalkya, Verse 206 (1)

(For the abuse of a man) of an inferior (status) (the fine is) half; and for (the abuse) of others' wives or superiors, (the fine is) two-fold.

Mîtākṣharâ:—*Adbameṣhu*, (In the case of an abuse) of men of inferior (status), i. e. relatively to the person abusing by regard to the inferiority in (the mode of) living and such other qualities, the fine is half. In the present context, the full fine being twenty five *panas* as stated in the previous clause, a fine equal to the half of that i. e. twelve and a half should be understood. As for an abuse regarding 'others' wives,' a uniform fine of double i. e. twice twenty-five i. e. fifty *panas* should be understood. Similarly, for an abuse of 'Superiors' i. e. of those who are relatively superior, in learning and conduct, to the person (abusing), the fine shall also be fifty *panas*.

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## Sûlapâni

## Yājñavalkya, Verse 206

Of equal varnas by regard to the person indulging in the abuse, and among those of low qualities than the accused, half of twenty five should be taken as the fine. In regard to an abuse of others' wives and of the preceptors or the like, double of that: i.e. fifty in quantity

Varyâh, 'classes', such as the Brâhmanas and the like Jâti, 'castes', such as the Mâtrâbhûṣṭakta etc. In regard to these also for an abuse by the higher of an inferior or by the lower of the superior, the administration of punishment should be made. The rest is clear (206)

Having thus stated the penalties in the case of all the Varnas the Author mentions a penalty for an abuse among the Varnas again but by reference to the Pratiloma<sup>1</sup> and Andoma order

## Yājñavalkya Verse 207

In the case of the abuse of one of a superior class, the fine is two-fold and three fold (respectively), and of one of a lower class, it is to be reduced in the ratio of a half (respectively)

Mitâksharâ —Apawâdâh, abuse, i.e. vilification. Abuses by persons belonging to an inferior class are prâtilomyâpawâdâh abuses of one of a superior class, teshu, in these cases, e.g. for a Kshatriya or a Vaisya abusing a Brâhmana, the fines should be understood respectively to be double of that mentioned in the foregoing text<sup>2</sup> laying down a double: i.e. of fifty panas, so that double i.e. a hundred, and a treble: i.e. a hundred and fifty panas (shall be understood)

In the case of an abuse of a Brâhmana by a Sûdra, there is either corporal punishment or cutting off of the tongue, as says Manu<sup>3</sup> "A Kshatriya having defamed a Brâhmana shall be fined one hundred" (Panas), a Vaisya, one hundred and fifty or two hundred, while a Sûdra shall make himself amenable for corporal punishment"

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In the cases also of a Vaisya and a Sûdra who are lower down a Kshatriya by one or more than one class (respectively), by a parity of reasoning, the penalty for abusing a Kshatriya should be understood to be a hundred and a hundred and fifty (panas) For a Sûdra abusing a Vaisya, a hundred (panas, shall be the fine)

1 'in descending and ascending order' Etc Yājñ. Âchâra Ch IV

2 'e.g. in Yajñ II 206 (1) above p 1249

3 Ch VIII. 267



In the cases of abuse of the lower classes e. g. in an abuse of a *Kṣatriya*, a *Vaiśya* or a *Sūdra* by a *Brāhmana*, of that, *tasmāt*, i. e. of the penalty for a *Kṣatriya* abusing a *Brāhmana* viz: of a hundred (*paṇas*), a reduction of a half should be made in the case of each class respectively, and the remainder i. e. fifty, twenty-five, and twelve and a half (*paṇas*), should be the fine, respectively, for a *Brāhmana*. That has been stated by Manu: "A *Brāhmana* shall be fined fifty (*paṇas*) for defaming a *Kṣatriya*; in (the case of the 'abuse of) a *Vaiśya*, the fine shall be twenty-five (*paṇas*); in (the 'case of) a *Sūdra* twelve." In the case of an abuse by a *Kṣatriya* of a *Vaiśya* or a *Sūdra* the fines respectively shall be fifty, and twenty-five (*paṇas*). And in an abuse by a *Vaiśya* of a *Sūdra* a (fine of) fifty (*paṇas*). Thus the law should be understood, *vide* the text of Gauṭama: "The fine in the (cases) of a *Kṣatriya* and a *Vaiśya* shall be 'similar as in the case of a *Brāhmana* and a *Kṣatriya* (respectively)' and also under the text of Manu: "A *Vaiśya* and a *Sūdra* must be punished 'exactly in the same manner according to their respective castes."

## Śūlapāṇi

## Yājñavalkya, Verse 207

The meaning is that for an abuse of the *Brāhmana* by a *Kṣatriya*, a hundred, and by a *Vaiśya* of a hundred together with a half. Obviously by making it fourfold two hundred is that for a *Sūdra*.

Manu states a penalty for an abuse of an inferior order: "A *Brāhmana* shall be fined fifty *paṇas* for defaming a *Kṣatriya*, and a half of fifty for (defaming) a *Vaiśya*, and for (defaming) a *Sūdra* twelve is the penalty. (207).

The Author mentions again a rule regarding a *Niyādhura* abuse

## Yājñavalkya, Verse 208

For an abuse threatening injury to the arm, neck, eye, or thigh, the fine shall be a hundred; and a half of it in (the case of) the foot, nose, ear, the hand, or the like.

Mitākṣharā:—For an injury to the arm &c. each by a threatening abuse i. e. for threatening by words e.g. in the form "I shall lop off 'your arm &c.'" *Sāyāḥ*, a hundred, i. e. a fine limited by a hundred shall be understood. In the case of a verbal threat of an injury to the foot, nose, ear, hand, or the like,—by the use of the word *Ali* 'or the like', (are also included) the hips and the like—*tadardhikāḥ*, half of that, i. e. half of that i. e. a fifty *paṇas*, should be understood.

Śūlapāṇi

Yājñavalkya, Verse 208

After a threat "I shall lop off your arm," followed by an injury, the penalty is of the extent of one hundred. In regard to the foot etc ;  
5 its half, i.e. fifty (208).

Yājñavalkya, Verse 209

When, however, a feeble person speaks like that, he shall be fined ten *panas*, similarly, one able should be asked to furnish security for the safety of him

10 Mitākṣharā :—Moreover, when he who is reduced in strength on account of fever or a like cause, threatens another with the words "I shall lop off your arms and other limbs", or the like, he shall be fined ten *panas*.

15 When, however, one has capacity and threatens, as before, another person who has been reduced in strength, he should be compelled to furnish security for the safety of the weak person for the period after the (infliction of the) fine of a hundred &c, mentioned before.

Śūlapāṇi

Yājñavalkya, Verse 209

20 One, however, who is unable to cause the injury, and speaks in this manner, shall be fined ten *panas*. One, however, who is capable and speaks in this way, after being punished with the aforesaid one hundred, shall be made to give security for the protection of the person threatened (209)

The Author mentions a penalty in the case of a *Tiara* abuse

Yājñavalkya, Verse 210

25 In the case of an abuse involving degradation from caste the fine is that for a middle *Sāhasa*. For (an abuse) imputing a secondary sin, however, he shall be compelled to pay the fine for the lowest *Sāhasa*.

30 Mitākṣharā —In the case of men belonging to the *Varnas*, an abuse of them involving their degradation, e.g. the offence of Brāhmicide &c, the fine shall be as that for a middle *Sāhasa*. For an abuse, however, imputing the commission of a secondary sin, e.g. 'Thou art a cow-killer' or the like, he shall be fined as for the lowest *Sāhasa*

Śūlapāṇi

Yājñavalkya, Verse 210

35 For an accusation of a Brāhmana in the form "you are a Brāhmicide" and the like by a Kṣatriya, the punishment to be administered is the middle *amercement*. And for an accusation for killing a cow etc, he should be made to pay the first *amercement* (210).

# Yājñavalkya, Verse 211

For an abuse of a *Brāhmana* learned in the three Vedas, the king, or the gods, the fine shall be (as for) the highest *Sāhasa*; the middling, (for an abuse) of the castes or the *Pāgas*; and the lowest (for an abuse) of the village or the country.

Mitākṣharā:—Moreover, *Brāhmanas* learned in the three Vedas i.e. accomplished by learning the Vedas. For an abuse of these, of the kings, and of the gods, the fine shall be (as for) the highest *Sāhasa*. Moreover, for an abuse of the *Pāgas* i.e. associations of the castes such as the *Brāhmana*, the *Mirdhūvasikta* and others, the fine shall be (as for) a middling *Sāhasa*. In the case of an abuse of a village or the country, the fine shall be understood to be (as for) the lowest *Sāhasa* each.

Here ends the Title of law called 'Abuse.'

## Viramitrōdaya

Now the chapter of law called 'Abuse' defined by 'Nārada': "Abusive language, caused in offensive and violent terms, regarding the native country, caste, family etc., (of a person) is termed Abuse." The Author discusses that

## Yājñavalkya, Verses 204-211

There, however, an abuse is of three sorts. So says Bṛhaspati: "Offensive language or defamation regarding one's country, village, family or the like which is not a fact that, is known as the abuse of the first degree. Referring (in terms of contempt) to a man's sister or mother, or charging with a minor sin, is termed abuse of a middling sort by those learned in the law. Charging a man with taking forbidden food or drinks, or taxing him with a heinous sin is termed abuse of the highest degree, as also maliciously exposing his weakest points."

*Dravyam* 'fact' i.e. the thing without it, in short false; thus a false assertion as to a sin or a defect in a limb or inferiority of family, an assertion of this nature is lowest; a false assertion about an inferior sin is a middling abuse, and a false assertion as to a heinous sin is the highest kind of abuse. This is the meaning.

There, in regard to the first, the punishment is stated. A true assertion e.g. 'you are blind'; an untrue assertion of a similar character in the case of one not blind; ironical statement i.e. an apparent praise resulting in a censure, as for example, in the case of a

blind person etc. the statement, 'you are lotus-eyed', or the like. If by these statements one reviles another in an ironical manner in regard to a defect in a limb or an organ, or being affected by a disease or the like, then he shall be punished with thirteen and a half *i. e.* a half and twelve *panas*. This moreover is (a rule) in regard to those of the same caste. That has been declared by Brhaspati<sup>1</sup>: "When two persons abuse each other, their punishment if they are equal in caste and merits has been approved in the Śāstra to be thirteen and half *panas*; in the case of equals the penalty is equal; of one who is inferior, the same is double, and for a superior, half has been ordained for a mutual abuse."

As regards abuse concerning a mother etc. Manu<sup>2</sup> states a special rule: "He who defames the mother, the father, the wife, the brother, the son or the teacher, and also he who does not give way to the preceptor shall be compelled to pay one-hundred *panas*." This according to Mitākṣharā<sup>3</sup> is applicable in the case of a mother etc. when they are guilty, and in the case of a wife when she is innocent (204).

'I shall have sexual intercourse with your sister or mother and have been having the enjoyment', one abusing thus and causing pain to one equal in caste, the king shall compel to pay the penalty of twenty-five *panas*. The use of the word *at*, 'or', is made indifferently; thereby 'I shall have intercourse with your daughter or wife even' and the like (form of abuse) also is included. The word *ka* is used simply for filling up the line (205).

The penalty of half by thirteen *panas* or twenty-five *panas* which is mentioned above in the case of equals shall be half in the case of inferiors when abused; in the case of others' wives or superiors, it shall be double of that stated for equals.

The Author mentions regarding mutual abuse in the case of persons who are relatively higher and inferior in caste, merit, and class also. *Dandā* 'punishment' etc. *varṇāḥ* 'classes', such as the Brāhmaṇa etc; *jātiś*, 'castes', such as the *Mārdhāvastika* and others, *uttarādharāḥ*, 'superior and inferior', *i. e.* higher and lower. In the case of mutual abuse between these the determination of the punishment should be specially made; as for example for a Brāhmaṇa for

1. See note above.

2. Ch. XX. 5.

3. Ch. VIII. 276.

4. The print of the Vīramitrodaya is thus 'सजादेर्निरपराधत्वे ज्ञायमा सापराधत्वे नैवदिनि विनासः' apparently a slip as-is confirmed by the Mitākṣharā where the reading is सापराधेयु मन्त्रविरु etc.

abusing a *Mūrdhāvasikta* who is inferior to a *Brāhmaṇa* and is superior to a *Kṣatriya* shall pay half as much more the penalty as is laid down for the abuse of a *Kṣatriya*, and less by a quarter of the penalty for the abuse of a *Brāhmaṇa* (206).

‘Half in the case of inferiors’ as has been stated above; as if mentioning this as an illustration, the Author mentions a special rule in the case of persons still lower and much higher *pratilomyeti* etc. In the case of an abuse of one of a superior class by one of those who are lower than the lowest, the punishments are respectively four-fold etc. In the case of an abuse of an inferior class by one of the highest class respectively of the lower ones, the punishments shall respectively be half, half of the half, and in the descending order. Thus such punishment as is prescribed in the case of an abuse of a *Brāhmaṇa* by a *Brāhmaṇa*, quadruple of that shall be for a *Śūdra*, triple of it for a *Vaiya*, and double of it for a *Kṣatriya* shall be the punishment for the abuse of the *Brāhmaṇa*. The punishment which is prescribed for the abuse of a *Brāhmaṇa* by a *Brāhmaṇa*, the half of that shall be for the abuse of a *Kṣatriya*, quarter of it for the abuse of a *Vaiya*, and the eight part for abusing a *Śūdra* shall be the punishment for a *Brāhmaṇa*. Thus should be understood elsewhere (207).

For an abusive threat ‘I shall cut off your arm’, or of a like nature, and threatening the destruction of an eye etc., the penalty shall be hundred *panas*, and for an abusive threat of injury to the foot etc., half of a hundred shall be the punishment in the case of persons equal in caste. By the use of the word *ādī*, ‘et cetera’, is included hips and other minor organs (208).

This, moreover, to cut off the arms etc., is in regard to one who is able; one, however, who is weak and indulges in such abuse shall be punished ten *panas*. In the case of one who is very strong and indulges in the threat of an injury should be compelled to give security for the protection of the whole and for the avoidance of the arm-cutting etc. By the use of the word *tu* is excluded one who is mightier still. By the use of the word *tathā*, i. e., ‘also’, is included the statement that in the absence of a security he should be kept under restraint by the king. Here also the more or less is to be determined by regard to the distinction of the best and the lowest (209).

The Author now mentions with regard to abusive threats of the first, middlemost and the lowest class. For an accusation involving

degradation such the offence of Brāhmicide or the like, for such a charge the penalty is as for the middle *sāhasa*. For an abuse, however, imputing the commission of a secondary sin, the penalty as for the lowest *sāhasa* should be imposed. That for the middle *sāhasa* has been noted before. This, moreover, is with reference to persons of the same quality and the like. By regard to the distinction of the higher or lower class, more or less should be inferred (210).

For an abuse of the *Brāhmanas* learned in the three Vedas i. e. accomplished scholars in the three Vedas, as also for the defamation of the king and of the gods also. Thus, by the use of the word *dati*, 'etc.', is included the cutting of the trees etc. For an abusive language against a *Brāhmana*; that for the highest *sāhasa*. For an abuse of the caste, the *pigas* etc. i. e. the associations of the *Mūrdhāvashika* and the like, as that for the middle *sāhasa*, and for an abuse of the village or the country, the penalty for the first *sāhasa* shall be imposed. For an abuse of *Kṣatriyas* and the like, a double etc. should be understood. In regard to an abuse involving degradation *Manu* says: "For a mutual abuse, however, by a *Brāhmana* or a *Kṣatriya* the punishment should be administered as ordained. On the *Brāhmana* the lowest, and on the *Kṣatriya* the middlemost amercement."

In connection with the *Śūtras* *Bṛhaspati* says: "For reviling the *vipras* he is liable to have his tongue cut off."

So also "For one pronouncing their names and castes with malicious intent, a red-hot iron spike of ten fingers in length should be ordered in his mouth." This, however, appears to be in regard to excessive abuse actuated by habitual malice.

Here ends the Chapter called Abuse

### Sūtapāṇi

Yājñavalkya, Verse 211

For those who indulge in an abuse of the learned in the three Vedas and the like, the highest amercement is the penalty; of the *yātis* such as the *Mūrdhāvashika* &c., of the association of tradesmen and the like, the middle amercement, and of the village or the country, the first amercement, shall be the punishment.

Thus ends the Chapter on verbal Abuse.

1. CH. VIII. 277.

2. Not found in the published extracts of *Bṛhaspati*.

## CHAPTER XIX.

## Assault.

Now begins a chapter called Assault. Its characteristics have been stated by Nārada<sup>1</sup>: "Injuring the limbs of another with a hand, "foot, weapon or otherwise, or defiling him with ashes or the like," is "termed Assault". That injury i. e. striking and causing pain to another's limbs i. e. (also) to movable and immovable property, by means of the hand, foot, weapon or otherwise—by the use of the word 'otherwise' *Ādi* i. e. (also) by means of stones &c—; similarly that defilement by means of ashes—by the use of the word *Ādi* 'or the like', by means of dust, mud, faeces also—which causes mental pain on account of the (vile) touch; both these are known as 'Assault.'

That by means which an injury is caused is a *danda*, i. e. the body; a *pāruṣya* i. e. inimical behaviour by means of it towards movable property or the like, is called *Danda-pāruṣya* (Assault).

Having, moreover, stated its threefold division, distinguished by the raising of the hand &c. a second threefold division again has been stated by the same Sage by regard to the threefold acts regarding articles of small, middling, or superior value: "There are, three "species of that also as it may be either small, middling, or extreme, "according as it consists in the raising (of a hand or weapon) or in "an unexpected attack, or in striking a wound (5). Stealing articles "of small, middling, or superior value, is called the three *Sāhasas*, "there, the thorny weeds should be extirpated." "An unexpected attack' i. e. striking one who has not the least warning (about it). Only three *Sāhasas* i. e. three kinds of *Sāhasas* i. e. daring deeds e. g. Assaults.

Moreover, when abuse or assault has once commenced, whoever of the two contending parties forbears, for such a one, not only that there is no punishment, but he is indeed to be respected. Similarly for one who first began the quarrel, there shall be a higher punishment. Also when after the quarrel has commenced, he who follows up his attack is liable to be punished.

And when it is not possible to discriminate between the guilt of the two, the fine shall be equal. Moreover, in the case of an insult offered to the Aryas by the Śūrapachas and the like, the Good<sup>1</sup> people themselves have authority to levy a fine; if they are unable, the king should indeed chastise them, and not (merely) receive a fine. Thus, the five rules of procedure have been mentioned<sup>2</sup> by the same Sage :

"For both kinds of these, a five-fold rule of procedure has been laid down: When, after an altercation has once commenced, and both have been excited to a high pitch, he who forbears is respected; and he who pushes on (the quarrel) deserves punishment. He who is the first to offer an insult is decidedly a criminal; he who returns the insult is likewise culpable; but for him who began the quarrel, the punishment shall be heavier (9). When both parties are implicated equally, he of the two shall receive punishment who follows up his attack, whether he was (originally) the aggressor or the defendant (10). When two parties have been guilty of insult, and both have commenced to quarrel at the same time, they shall suffer the same punishment, in case that no difference (in their respective culpability) becomes apparent (8). If a Śūcapāka, Śhaṇḍha, a Chāṇḍāla, cripple, one who maintains by killing (beings), an elephant-driver, a Vṛātya,<sup>3</sup> a slave, transgress their limit and offer an insult to the teacher,<sup>4</sup> preceptor, or the king, they shall instantly be punished corporally (11 and 12). Any one of the better class whom these persons offer an insult, may himself administer the punishment. The king has<sup>4</sup> nothing to do with their punishment (13). For these people are the refuse of human society, and their property (likewise) savours of impurity. Therefore the king shall inflict corporal punishment upon them, and he must not (merely) punish them with a fine (14)."

1. The good men themselves shall punish them. But if they are unable, then the king shall chastise them and not merely remit with a fine. *Atadāya*.

2. Ch. XV. 7-14.

3. One deprived of the caste for the non-performance of the ceremony of initiation. These are again admitted into the caste by the performance of a rite known as the *Vṛātya-doma*. It is also the descriptive name used in reference to the caste which originated from a Śūdra father and a Nishādiya mother.

4. Dr. Jolly reads thus: *गुरुं वा पित्रे वा* (11) *गुरुं वा पित्रे वा* &c. (12) "or one who treats a Guru or spiritual teacher with disregard" "should offend a superior &c" (12)



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Premising the necessity of establishing an assault of the character thus described the Author mentions the means of dealing out punishment when there is a doubt about it

Yājñavalkya, Verse 212

In the case of an assault to which there were no witnesses the point at issue should be determined by means of marks, by probabilities, by popular report and the like, lest the mark should be counterfeited 5

Mitāksharā—When any one complains to the king thus, "I was beaten by such a one in secret," then *chubhāh*, by means of marks, i. e. signs indicating colour &c. on the body, *yaktyā*, by probabilities, by regard to the relation of cause and effect, *āgamenā*, popular report, i. e. from the talk among the people—by the use of the word *cha*, 'and' 'the like,' by an order also—the determination should be made bearing in mind the possibility of a counterfeit mark. 10

Vīramitrodaya

Now the Author begins the chapter on Assault. Its characteristics have been mentioned by Nārada<sup>1</sup> "Injuring the limbs of another with a hand, foot, weapon or otherwise or defiling him with ashes or the like is termed assault. By the use of the word *ādī*, 'and the like,' is included the cutting of the trees etc 15

There first, on a doubt arising whether one has committed the assault or not, the Author mentions the means of determining the same 20

Yājñavalkya, Verse 213

For an attack for which there are no witnesses i. e. (one) made in secret, and when the assault was made with the feet and weapons, and a denial is set up, such a dispute should be decided i. e. determined, by means of marks such as scars etc. on the body, by probabilities taking into consideration the motive etc., by knowledge i. e. by popular report. By the use of the word *cha*, 'and,' by orders *Kuta* etc i. e., by others than by counterfeit marks. By the use of the word *tu*, 'however,' the Author excludes the imposition of punishment etc. for mere verbal accusation, such as 'I was beaten by him' (212) 25 30

1 There is a mistake in the print of the text at p 131 II for एव यथायुक्तं &c read एव यथायुक्तं एते  
 2 Ch XV, 4

## Śūlapāṇi

## Yājñavalkya, Verse 212

Having assaulted another at a place devoid of witnesses and smearing one's body with blood, when one asserts "I have been beaten by him", there, for fear of counterfeit marks the decision is to be given by regard to unadulterated marks and also by the evidence of truthful people. Bṛhaspati<sup>1</sup> states the characteristics of an assault: "Injury by means of a staff, a stone, a club or ashes, mud or dust, or attacking with weapons, "is termed assault" (212)

10 Having thus determined the particular means, the Author mentions a special punishment

## Yājñavalkya, Verses 213 and 214

For throwing ashes, mud, or dust the punishment recorded is ten *panas*; and double that amount for attacking with an impurity, a heel, a spittle (213)

This if (the offence be committed) against one of an equal class. But (it would be) double (if the offence be committed) against another's wives, or against persons of higher orders; if, against persons of lower classes, a half of the fine; there shall be no fine for an offence committed through intoxication, drunkenness, or the like (214).

Mītākṣharā:—He who throws ashes, mud or dust at another should be compelled to pay a fine of ten *panas*. By impurity is also included tears, phlegm, nails, hair, ear-wax, rheum of the eyes, and leavings at the meals. Pārśhṇī, *heel*, the hind part of a foot. Nishkhyūtam, *a spittle*, i. e. the water thrown out of the mouth. For an assault with these, a fine twice of that i. e. the fine mentioned before viz. (of) ten i. e. twenty *panas*, must be understood. Again, a special rule has been stated by Kātyāyana in cases of Assaults with faeces &c. "It is declared to be four-fold, when the assault is committed by (means of throwing) the vomit, or urine, or faeces or the like, on the lower extremities; six-fold if thrown upon the middle extremity of the body; but eight-fold if upon the head." By the use of the term *Ādī*, 'or the like,' are included fat, semen, blood, the marrow of the bones, and flesh &c. (213).

35 The fine thus mentioned before should be understood in the case of persons of the same tribe. In the case of assaults on the

wives of others, it applies generally without differentiation. Also, (in the case of assaults) against persons of a higher order *i. e.* higher in learning or conduct as compared with (the actor) himself, a fine must be understood which would be double in amount of that mentioned before *i. e.* of ten *panas* and also of twenty *panas*. In the case of persons of a lower class *i. e.* inferior in learning &c. as compared with himself, a fine half in amount of that mentioned before *i. e.* five *panas*, or ten *panas* must be understood.

*Mohah*, infatuation, means mental aberration. *Madah*, drunkenness, is the particular condition (which is) produced by the drinking of intoxicating liquor. By the use of the word *A'da* the possession by a spirit &c. (also are included). When under the influence of these an assault is committed, no penalty shall be imposed even when the ashes etc. (actually) touch the body (214).

## Vīramitrodaya

Now after having thus determined (the fact of) the assault as the next step, the Author states the penalties according to circumstances up to the end of the chapter

## Yājñavalkya, Verses 213-14

For a bodily assault upon another such as by ashes, mud or dust, the penalty for the assailant shall be ten *panas*. For an attack with an impurity such as tears etc., or with a heel *i. e.* the hind part of the leg, or with a spittle *i. e.* the excreta of the mouth, the penalty is double of ten *panas* (213).

The penalty in this manner should be observed in the case of the equals in all the *varnas*. For an attack on others' wives or upon members of the higher *varnas*, in regard to an offence of this character, the punishment shall be double of that stated for the equals. In regard to a similar offence towards members of lower *varnas*, half the penalty of that stated for the equals should be imposed. *Mohah*, 'infatuation', *i. e.* ignorance; *madah*, 'drunkenness', such as by liquor etc. By the use of the word *ada*, 'or the like', is included arrogance. By these even, if assault is made with ashes etc., there is no punishment. By the use of the word *cha*, 'and', is indicated the addition of treble and quadruple punishments in the case of higher and higher degrees. It shall be four-fold when (the attack is committed) by means of urine, vomit, or fish or the like; six-fold, if on the middle part of the body; but eight-fold, if upon the head. The quadruple etc. is to be understood as of ten *panas* (213-14),

## Śūlapāṇi

Yājñavalkya, Verse 213-14

When the ashes etc. touch another's body the penalty is ten panas. For a touch of the impurities also the same doubled (213).

5

Yājñavalkya, Verse 214.

Similar is the penalty as characterized above in the case of persons of the same caste; in the case of others' wives or of persons of superior caste it is two-fold. For those of the lower caste, half. When it is done through mistake etc. (there is) no punishment (214).

10

The Author mentions a penalty in cases of assault by inferior persons (against superiors)

Yājñavalkya, Verse 215

The limb of one who is himself not a *Brāhmaṇa*, which causes injury to a *Pīpṛa*, must be cut off. When it is raised, the lowest amercement, (is laid down), and half of it is (the case of) a touch.

15

Mitākṣharā:—The limb of one who is (himself) not a *Brāhmaṇa*, *abrāhmaṇasya*, i. e. of a *Kṣatriya* or the like, viz. the hand, the foot etc. which causes injury to the *Brāhmaṇas*, that should be cut off. Of a *Sūdra* causing injury to a *Kṣatriya* or a *Vaiśya* even, the punishment indeed is the cutting off of the limb: "With whatever limb a man  
20 "of a lower class does injury to one of a higher class, even that limb of "his should be cut off;" this is the command of Manu<sup>1</sup>. From the rule as to the cutting off of the limb of a *Sūdra* for an offence against any one of the twice-born tribes, by a parity of reasoning, the same punishment would accrue to a *Vaiśya* causing any injury to a *Kṣatriya*.

25

Udgīrṇe, when raised, i. e. when a weapon etc. is raised with a view to strike, the punishment for the first amercement must be understood. Of a *Sūdra*, however, even for a raising (of the hand etc.), the punishment, indeed, is the cutting off of the hand etc., vide the text of Manu<sup>2</sup>: "For raising a hand or a stick, he deserves the punishment  
30 "of having his hand cut off."

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Sparśane, for touching, a weapon etc. for raising it, however, *ladardhikāḥ*, half of it, i. e. half the punishment for the lowest *Sāhasa*, must be understood. In cases of assaults by means of ashes etc. by a

*Kṣatriya* and a *Vaiśya*, the punishment should be determined by regard to the rule stated in the text: "In cases of the abuse of one of a superior class, the fine is two-fold, and three-fold." Even, there, a *Sūdra* shall, indeed, have his hand cut off, *vide* the text of Manu: "If out of arrogance he spits (on a superior), the king shall 5  
"cause both his lips to be cut off; if he urines (on him), the penis;  
"if he breaks wind (against him), the anus."

## Sūlapāṭi

## Yājñavalkya, Verse 215

The hand etc. of a non-Brāhmana causing injury to a Brāhmana 10  
should be cut; for an attempt made, however, the first amercement; but  
for touching a weapon, as an attempt,—half (215).

Having thus stated the punishment for an offence in the case of persons of lower classes, the Author proceeds again in regard to a person of the same caste 15

## Yājñavalkya, Verse 216

For holding up a hand or a foot, the punishment shall be ten and twenty *panas* (respectively). For threatening each other with a weapon, the punishment shall be the middle amercement for all.

Mitākṣharā:—For raising a hand or a foot with the object of 20  
striking, the fine shall be understood respectively to be ten *panas* or  
twenty *panas*. For raising a weapon with the object of striking each  
other, in the case of the classes, the middle amercement shall be the fine.

## Vīramitrodaya

## Yājñavalkya, Verses 215-16

The limb of a *Kṣatriya* such as hand, foot etc. which causes 25  
injury to a *Brāhmana* by beating etc. should be cut off. By the use of  
the word *cha*, 'and,' all the *Vaiśyas* and the *Sūdras* causing injury to  
*Kṣatriya*; and the limb of a *Sūdra*, causing injury to a *Vaiśya* are  
included. *Kena kena*, 'by whom?' *Vide* this text of Manu: "With 30  
"whatever limb a man of a lower class does injury to one of a higher  
"class, even that limb of his should be cut off;" this is the command of  
Manu. By the reading of the word *tu*, 'however', is excluded the  
cutting off of the limb of a Brāhmana.

*Udgārṇa*, 'when raised', i. e. when uplifted for the purpose of an attack, in the case of a weapon etc. the penalty is as for the first *sāhasa*. For a mere touch of the weapon, however, by oneself for the purpose of raising it, the penalty is half of that for the first *sāhasa*. The first *sāhasa*, moreover, is for one other than a Śūdra. In connection with a Śūdra Manu<sup>1</sup> having observed: "for raising a hand or a stick, "he deserves the punishment of having his hand cut off."

In the case of members of all the *varṇas*, for the offence of raising the hand mutually against each other, the punishment is ten *paṇas*. For an attack with the foot the punishment is assessed at twenty *paṇas*, and for raising a weapon, the punishment is of the middle *sāhasa*. By the first use of the word *tu*, 'however', is excluded the falling of the weapon, and by the second use of the word *tu*, is excluded the penalty stated in the case of unequal castes (215-16).

### Śūlapāṇī

Yājñavalkya, Verse 216

For an attempt for an attack with the hands or the feet, the punishments respectively are ten and twenty *paṇas*; for an attempt with a weapon, the middling amercement (216).

### Yājñavalkya, Verse 217

For pulling out the foot, the hair, the clothes or the hand (of another), ten *paṇas*; for causing pain by violently pulling a man caused to be tied in his clothes and trampling him under the foot, a hundred (*paṇas*) is the fine.

Mitākṣharā:—Moreover, he who catches hold of the foot, the hair, the clothes, or the hand, or any of these, and pulls them out, *ullūchhati*, i. e. violently plucks them, such a one shall be fined ten *paṇas*. Causing pain, pulling, tying in a cloth and trampling under foot (all joined together, make up the compound expression) 'Causing pain, pulling, tying in a cloth and trampling under foot'; for doing that, a man shall be fined a hundred *paṇas*. The purport is this: He who after tying in a cloth, and violently pulling, tramples another under foot, such a man should be compelled to pay a hundred *paṇas*.

### Śūlapāṇī

Yājñavalkya, Verse 217

For pulling up the leg etc. the punishment shall be ten *paṇas*. Injury by pulling and tying with a cloth these together make the conjunct compound, 'one who ties round by the upper cloth'; and after tightening pulls up with the foot, for him the penalty shall be one hundred *paṇas* (217).

## Yājñavalkya, Verse 218 ;

The man causing pain without shedding blood by means of a stick or the like, shall be fined thirty-two *panas*; double (that) at the appearance of blood

Mītākṣharā:—Moreover, he, however, who strikes mildly with a piece of wood or mud so that no blood is shed, such a one shall be fined thirty-two *panas*. When, however, on account of hard beating, blood is shed, then he shall be fined twice thirty-two i. e. sixty-four *panas*. A special rule, moreover, has been pointed out by Manu in the case of the breaking open of the skin, flesh &c.: "He who breaks the skin shall be fined a hundred, as also one who draws out blood. He who breaks the flesh, six *niskas*, while he who breaks a bone shall be banished."

## Sūlapāṇī

## Yājñavalkya, Verse 218

For severely attacking with a wood the punishment shall be thirty-two *panas* if blood does not appear. For its appearance, however, the penalty is double (218).

## Yājñavalkya, Verse 219

For breaking a hand, a foot, or a tooth, and for cutting an ear or nose, the fine shall be the middle (amercement); similarly for laying open a sore, and also for beating almost to death.

Mītākṣharā:—Moreover, for breaking a hand, a foot, or a tooth, in each case; as also for cutting an ear or the nose, (in each case); for laying open a healed-up sore; and for beating in such a manner that the man becomes almost dead, the middle amerement shall be understood. Here, the similarity of acts should be ascertained by regard to the result of the act.

## Sūlapāṇī

## Yājñavalkya, Verse 219

For breaking the hand, piercing the nose, opening up a healed scar, or for striking one who is almost dead, the penalty is the middle amerement (219).

## Yājñavalkya, Verse 220

For a restraint in respect of motion, eating, or speech; for an injury to the eye and the like; for a fracture of the neck, the arm, or the thigh, the middle amerement.

Mītākṣharā:—Moreover, for restraining motion, eating, or speech, for an injury to the eye—and by the use of the term *Adi*, to the

tongue also—; *landhārā* means the neck; an arm is wellknown. *salāhi* means the thigh; for fracturing each of these, the fine shall be the middle amercement.

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### Śūlapāṇi

5

#### Yājñavalkya, Verse 220

For obstructing the movements, etc. piercing the eyes etc or for breaking the neck and the like, the punishment shall be the middle amercement (220).

#### Yājñavalkya, Verse 221 (1)

10

When several assault a single person, the fine for them shall be double of that already mentioned.

15

20

25

Mitākṣharā:—Moreover, when however, several ( people ) combining together break the limb of one ( man ), or do any other similar act, then whatever fine has been laid down for the particular offence, a fine double in amount of that must be understood in each case respectively. On account of the extreme aggravation of these offences, even in the cases of offences committed against persons of inferior classes, or of higher classes respectively, the reduction or increase is to be determined by reference to this very law of punishment in the order mentioned in regard to the offence of abuse and the offences enumerated thereafter, and laid down in regard to persons of the same class, *vide* the text : “ Whatever punishment has been mentioned for the offence of abuse ( and the like ) committed against persons of superior or inferior classes respectively, the same penalty shall respectively be inflicted by the King in the offences of assault ( and the like ) also ”

### Vicramitrodaya

( For an assault ) on members of the same caste the Author states

#### Yājñavalkya, Verses 217-21 (1)

30

For pulling out i. e. pulling with a jerk the feet etc. of others the penalty is ten *paṇas*. For causing pain i. e. for causing injury by pressing one's foot against one who has been tightly tied by a cloth and pulled, the penalty is a hundred of the *paṇas* ( 217 ).

1 Author not known. Bāṣambhaṭṭa assigns it to Manu. But it is not found in the available editions of Manu.



When a man assaults another with a wood etc so that blood is not seen, he should be condemned to pay thirty two panas, for the appearance of the blood, however, he should be made to pay double. In the case of breaking open of the skin etc Manu<sup>1</sup> states a special rule "He who breaks a skin shall be fined a hundred as also one "who draws out blood. He who breaks the flesh six *nishkas*, while "banished shall be he who breaks the bone (218)

For a wound of the three organs such as the hand and the rest each, for cutting of the nose, for opening up a healed scar, and for beating in such a manner that he would be as if dead the penalty is the middle *sahasa*. By the use of the word *lathā*, 'similarly', is included the cutting of the finger (219)

*Cheshitchi*, 'motion etc', for causing a restraint in respect of motion, eating or speech or any of these for piercing the tongue etc as also for an injury to the neck, the arm or the thigh for an injury to any of these, the punishment is the middle amercement. By the use of the word *ha*, 'and', is included the heel and the like (220)

Where many attack one, there the penalty which has been stated for one as an assailant, double of that is the penalty for the other. This is the meaning. Here the higher or lower punishment or the distinction of higher or lower is not to be observed [221 (1)]

### Yājñavalkya, Verse 221 (2)

That which had been taken away during the scuffle shall be restored and a fine double (in value) of that

*Mitāksharā* —During the continuance of the scuffle whatever has been taken away by a party should be given back by him. Also a fine double the amount (in value) of the thing taken away must be paid as penalty for the deprivation

### Vīramitrodaya

Moreover

### Yājñavalkya Verse 221 (2)

During the continuance of a fight what has been taken away by one as belonging to another should be returned by him to the other, and on that account a penalty of double the value of that as for taking it away should be taken by the king [221 (2)]

Sūlapāni

Yājñavalkya, Verse 221

For many combining together and beating one, the punishment shall be double of those stated. And in the scuffle whatever has been taken away from any one that shall be given to him, and double of that should be given to the king as a penalty (221)

Yājñavalkya, Verse 222

He who causes bodily injury, shall pay the expenses incidental thereto, and shall also pay the fine mentioned in regard to the particular assault

10 Mitakharā —Moreover, he who causes injury (to another) by beating, shall pay such expenses as may be incurred for dressing and curing the wound, and for medicine and special diet therefor. The fine to be paid is the fine imposed for the particular kind of assault in which the wound was caused, and not merely the amount of the ex-  
15 penses incidental to the wound

Vīramitrodāya

Yājñavalkya, Verse 222

He, however, who causes a wound etc. by beating shall be compelled to pay the amount of expenses incurred for the complete  
20 recovery of the one on whom a wound has been caused. The meaning is he should be compelled to pay as much money as would be required for procuring medicine etc. for him. In places where a wound etc. has been caused, not only the payment for it, but also a penalty should be caused to be paid by him as has been prescribed generally for the  
25 particular quarrel. The use of the word *cha* 'and', in the cumulative sense excludes option (222).

Sūlapāni

Yājñavalkya Verse 222

One who causes pain to another by breaking the hand, foot, etc. such  
30 a one shall pay the expenses for the restoration &c. for as much period as is required for him to be under nursing etc. to be able again for such interval. That punishment which has been stated for a scuffle that also he shall be made to pay (222)

Having mentioned the penalties for assaults upon the limbs of others, the Author now mentions the penalty for the spoliation of external property<sup>1</sup>

### Yājñavalkya, Verse 223

For striking at the wall, or for boring or breaking or demolishing it, he shall be made to pay a fine of five, ten and twenty *panas* respectively, and also the expenses ( incidental thereto ). 5

Mītākṣharā:—For striking at a wall with a club or other similar weapon, or for making a hole in it, or for breaking it into two ( sections ), the fine shall be understood to be five *panas*, ten *panas*, and twenty *panas* respectively. For demolishing a wall, moreover, all these three fines shall be inflicted cumulatively. Also the amount ( of expenses ) for rebuilding it shall be paid to the owner. 10

### Sūlapāṇi

#### Yājñavalkya, Verse 223

For an attack with a club etc, or a wound with a stick, or for piercing with the sword, one should be compelled to pay respectively five, ten, and twenty *panas*. Similarly for pulling over a wall or the bricks, etc by the reasoning of juxtaposition, twenty *panas* also should be declared and he should also be made to pay the expenses for the restoration (223) 15, 20

### Yājñavalkya, Verse 224

One throwing in a house a thing ( which is capable of ) causing bodily injury or deprivation of life shall be compelled to pay sixteen *panas* for the first, and the middle amercement for the second offence ( respectively ).

Mītākṣharā:—And again, one throwing into the house of another things which cause bodily injury e. g. thorns &c shall be compelled to pay sixteen *panas*; while one throwing things causing deprivation of life e.g. poison, snake &c shall be punished in the middle amercement. 25

### Sūlapāṇi

#### Yājñavalkya, Verse 224

For throwing thorns and other such things in the house as also a snake and the like, for the first he shall be compelled to pay sixteen *panas*, and for the second the middle amercement (224) 30

1. बहिर्गुण वर्धनार्थे. The offences mentioned hitherto refer to a man's *avasthā*, internal property, such as hand, feet &c, now the Author mentions offences relating to his external property. Shertay stated and in terms of the Indian Penal Code, the offences enumerated above are Offences against the Body. The author now enumerates Offences against Property. 32

The Author mentions the punishment for assaulting beasts

**Yājñavalkya, Verse 225**

For causing pain, drawing blood as also for cutting off branches, or a limb of minor beasts, the fine shall be one beginning with two *panas* and upwards.

- 5 Mitākṣharā:—In the case of minor beasts such as the goat, the sheep, the deer and the like, for beating, causing injury, and drawing blood; or a sākhāṅgachhedane, for cutting off the branches—by the word *Sākhā*-branch—are indicated such limbs as are without the circulation of life in them; limbs such as the horns &c.—*āṅgāni*, limbs, such as
- 10 the hands, the feet, and like others. *Sākhā* (A branch) and *āṅga* (a limb) joined together make up the compound expression *Sākhā-āṅgam*. For cutting that, the fine is (laid down) commencing with two *panas* &c. A fine which has in it two *panas* is a fine of two *panas*. That series of punishments in which a sum of two *panas* is
- 15 the first i. e. the beginning—is a fine 'beginning with two *panas* and upwards.' That series of fines moreover is two *panas*, four *panas*, six *panas*, eight *panas*, and in a similar series, and not as two *panas*, three *panas*, four *panas*, five *panas* &c.

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- If it be asked how is that? the answer is: By regard to the
- 20 heinousness of the offence, the three kinds of higher punishments are to be understood as being higher than the lowest punishments. There, also, instead of resorting to the numbers three &c. which have not been specifically mentioned, it is better to get at the aggravated penalty by the repetition of the number two which has been specially
- 25 mentioned. Thus there is no fault.

**Śūlapāṇi**

**Yājñavalkya, Verse 225**

- For causing injury to inferior animals such as the goats, sheep, etc. for causing blood, and also for cutting the branches, such as the horns or
- 30 the limbs or feet etc. the punishment shall respectively be in doubling order beginning with two *panas*. At some place the reading is double of the double in order (225).

## Yājñavalkya, Verse 226

For cutting off (their) genital organs, and for causing death, the middle amercement, as also the price. In the case of superior animals, the fine shall be double in similar cases.

Mītākṣharā:—Moreover, for cutting off the genital organs of minor beasts, and for causing their death, the fine shall be the middle amercement; and the price shall be paid to the owner. In the case of superior animals, however, *e. g.* the cow, elephant, the horse, and like others, *eteṣhu sthāneṣhu, for similar cases, i. e.* for beating, or drawing out blood or doing similar acts, a fine double of that mentioned before should be understood.

## Śūlapāṇi

## Yājñavalkya, Verse 226

For the cutting of the genital organs of lower beasts or for killing them the middling amercement and the price should be caused to be paid to the owner of the animal. In the case of higher animals such as the cow etc. double the amount of that stated before should be levied (226).

The Author mentions the penalty for an injury to immovable property

## Yājñavalkya, Verse 227

For cutting off the branches, or the trunk, or uprooting entirely the trees which throw down branches having sprouts, as also trees which are the means of livelihood, the fine is twenty *panas* and (its) double.

Mītākṣharā:—*Prarohāḥ, sprouts, i. e.* shoots, branches having these are 'branches having sprouts'; *i. e.* those branches which when cut off, develop again at each knot of trees, like the banyan and the like such trees, are called *prarohāśākhināḥ, trees which throw down branches having sprouts*; for cutting off the branches of these. That from which the original branches shoot out is called the trunk; for cutting that, as also for cutting up a tree together with its roots, there shall be a fine beginning with twenty *panas* and increased by twofold of the previous one.

This is what is (intended to be) said: The three penalties of fine viz. twenty *panas*, forty *panas*, and eighty *panas* are inflicted respectively for the offences of the cutting off of the branches and for the offences following in their order.

And even of trees which do not 'throw down branches having sprouts,' but which are a means of livelihood *e.g.* the mango tree and the like, fines similar to these mentioned before must be understood for acts similar to those specified above, *i.e.* in the case of trees which are not  
5 the means of livelihood, nor do throw down branches having sprouts.

## Śūlapāṇi

## Yājñavalkya, Verse 227

For lopping off the branches of trees, the roots of which enter the ground such as the *vata* etc. or of trees such as the mango and the like  
10 which are the source of livelihood of the people, beginning with twenty paces the punishment should be increased in doubling order of the one prior in the case of the one following (227)

The Author mentions a rule regarding particular trees

## Yājñavalkya, Verse 228

15 In the case of trees growing in a sacrificial place, a cemetery, a boundary, a sacred place, or a temple, and trees well known, the fine is two-fold.

Mitākṣharā:—For cutting off the branches or for doing like acts in regard to trees growing on a sacrificial place or in a similar other place, a fine twice that mentioned before. So also in the case of trees which are  
20 well known such as the *pipṣala*,<sup>1</sup> *palāśa* and the like, the fine is two-fold.

## Śūlapāṇi

## Yājñavalkya, Verse 228

25 *Chaitya* is a tree growing on a high place; *mānava*, *i.e.* 'well-known', for the cutting of the trunk etc. of those twenty (padas) is the consequent (inference) (228).

The Author mentions a rule regarding creepers etc.

## Yājñavalkya, Verse 229

30 In the case of injury in the aforementioned parts to *Gulma*, *Guchchha*, *Kṣhupa*, *Latās* (creepers), *Pratāna*, *Oṣadhi*, and *Vimudh*, the fine is half of that before mentioned.

Mitākṣharā:—*Gulmāḥ* such as the *Mālātī* plant and the like, are those creepers which do not develop into any considerable length. *Guchchhas*

1. *Pipṣala*—is the holy fig tree. *Ficus Religiosa* *Palāśa* also called *Kumbuka* *Butea Frondosa*, see p. 1151 n. 5 also p. 214 n. 3 (above)

2. These are the several groups of creepers and shrubs with minute distinctions which have been indicated by Viṣṇuśaṣṭa further on.

3. मालती (*Mālātī*) *Eclisa Caryophyllata*, is a kind of jasmine with white fragrant flowers.

are not in form like creepers, nor are they generally strught and smooth, e g the *Kurantaka*<sup>1</sup> plant and like others *Ksbupah* e g the *Karavira*<sup>2</sup> plant or the like, which are generally straight and smooth Lalāh or creepers which develop into considerable lengths such as the grape, *Atmuka*<sup>3</sup> &c *Pratānāh* are creepers without knots or offshoots, 5 and growing straight such as the *Sāruā*<sup>4</sup> and others *Oshadhayah* are those which develop fruit such as the paddy plant etc *Vrudhah* are those which even when cut grow and develop in various parts, such as *Gudhūā*<sup>5</sup> and the like

In the case of these, for injuries as aforementioned such as cutting 10 & e lopping off, a fine half of that mentioned before must be understood

Thus ends the Chapter on Assault.

#### Viramitrodaya

Having thus stated the penalty for an assault on the body of an individual, the Author mentions the same for an assault on other things 15

#### Vājñanavalkya Verses 223-29

For striking at & e felling to the ground, a partition & e of a wall or for piercing through it with a club etc, or for cutting it & e splitting into two with a sword etc or for rending it with a stick etc—the word *tathā*, 'similarly', goes with all the three The meanings of all have 20 been expressed by the words clubs etc Five, ten and twenty *paṇas* in order follow alternatively in the case of attack, for felling it down, however, *śatdayayam*, the expenses for it & e the amount of money spent for the reconstruction of the wall By the use of the word *tathā*, 'also', simultaneity is intended (223) 25

1 कुरन्तक (*Kurantaka*) *Amaranthus Vesiculosa* a species of Amaranth white or yellow in colour and having thorns

2 कवीर—(*Karavira*) *Nerium Oleaceum* a kind of tree with white red or yellow flowers, known in marathi as the *Kavāra* (कवेर)

3 अमिषुक (*Atmuka*) a kind of creeper otherwise known as *Vādāra* (वदर) (marathi वीरा or कलुषी वीरा) represented as twisting itself round the mango tree and as the beloved of that tree Also the name of a tree *Dallergia Gupenensis* (विदिता) *Apte*

4 कालि—This plant cannot be identified

5 गुडुकी (*Guduki*)—Marathi गुडुकी *Cocculus cordifolius*—a very useful plant generally growing on trees, it is a drug of considerable importance in the Indian medicine

Things which are likely to cause pain such as thorns etc., or which may cause deprivation of life, such as a snake etc. one throwing these in the house of another, shall be punished in the manner that the throwing causes injury. There the first i. e. the one who throws thorns  
5 etc., sixteen *panas*; the second i. e. one who throws a serpent etc. should be compelled to pay the middle amercement (224).

In the case of minor beasts such as the deer, the goat etc. for an attack which brings out blood and causes pain, or for cutting off the branches in the form of the horn etc., or for the injury to a limb such  
10 as a foot etc. a series of punishments of which two *panas* is the first shall be inflicted. This is the meaning. Here by mentioning the number two the increase in the *panas* is by two and two in respective order (225)

For cutting off the organ of minor beasts or for killing them, the  
15 middle amercement shall be the punishment. And he shall also pay the price to the owner. For causing injury to superior animals, double the amount of penalty stated in the case of minor beasts should be inflicted. By the use of the word *cha* 'and', here also the price should be paid. By the use of the word *eva*, 'only', is excluded the payment of the price  
20 in the case of the four such as the one who causes pain etc. (226).

In the case of trees which throw down branches having sprout, such as the *tata* tree and the like, and also trees which are the means of livelihood such as the mango and the like, for cutting off the branches or the entire trunk from its roots up and of its limbs the punish-  
25 ments shall be double commencing with twenty *panas* i. e. twenty. forty, eighty respectively in the case of the three. By the use of the word *cha*, 'and', is included the fact that in the case of trees with roots going down being the source of livelihood and the rest etc., for cutting it off, double that shall be the punishment (227)

*Chaitya*, 'a sacrificial place', i. e. a lovely place; boundary i. e. the limit of two villages and the like. On these i. e. on these holy and sacrificial places, on the places where there are temples of gods, for cutting off the branches of trees growing there, as also in the case of well known trees such as the *pippala* etc. double of that mentioned  
35 before i. e. of twenty *panas* etc. shall be the punishment. By the use of the word *cha* is added by inclusion the payment of expenses for restoration (228)



*Gulmāḥ* i.e. creepers not long nor thick such as *Māṭṭī* etc  
*Guchchāḥ* i.e. not having the form of a creeper and not straight such as the  
*Kuraṭṭā* and the like *Kṣhupāḥ*, small trees with straight stems  
 such as the *Karavīra* plant and the like *Lūṭhāḥ* creepers extending to  
 great lengths such as the *etimukta* and the like These also growing 5  
 thick without any knots or offshoots such as *vāra* etc *Oṣṭhāyakaḥ*,  
 herb which develop fruit such as the paddy plant etc Although cut  
 they grow variously again and so called *virudhāḥ*, such as the *guduchi*  
 and the like For the cutting off of the branches of these, half of what  
 has been stated before, i.e. of twenty *panas* i.e. ten *panas* shall be the 10  
 punishment Here also the payment for the expenses of the recoup-  
 ment is also to be observed *Manu* "He who raises his hand or a  
 "stick, shall have his hand cut off, he who in anger kicks with his  
 "foot shall have his foot cut off (281) A low caste man who tries to  
 "place himself on the same seat with a man of a high caste shall be 15  
 "branded on his hip and be brushed, or (the king) shall cause his  
 "buttocks to be gashed (282) If out of arrogance he spits (on a  
 "superior), the king shall cause both his lips to be cut off, if he urin-  
 "es (on him), the penis, if he breaks wind (against him) the anus (283)  
 "If he lays hold of the hair (the king) should lop off his hands 20  
 "unhesitatingly, likewise (if he takes him) by the foot, the beard,  
 "the neck, or the scrotum (284) This penalty is for a Śūdra in  
 regard to a Brāhmaṇa *Viṣṇu* "One who causes pain without  
 "blood thirty *panas*, with blood sixty *panas* For fear of proximity  
 other punishments are not stated here (223-229) 25

### Śūlapant

Yājñavalkya Verse 229

*Gulmāḥ* such as the *māṭṭī* plant etc *Guchchāḥ* such as the *Kuraṭṭā*-  
*taka* etc, *Kṣhupāḥ* such as the *Karavīra* etc *Lūṭhāḥ* i.e. creepers such as  
 grapes etc *Prāṇāḥ* i.e. creepers without knots or offshoots such as the 30  
*vāra* etc *Oṣṭhāyakaḥ* i.e. herbs such as corn trees which develop fruit  
*Virudhāḥ* i.e. creepers which even when cut grow with special strength such  
 as the *guduchi* etc, for the cutting of the trunk etc of these half of the  
 penalty stated before And the payment for their growth again

Thus ends the Chapter on Assaults

35

## CHAPTER XX

## Sāhasas or Heinous Offences

PAGES 135\*

Now, intending to discuss the title of law called the *Sāhasa*, the Author first states its definition

## 5 Yājñavalkya, Verse 230 (1)

When common property is forcibly carried away, that is called a *Sāhasa*

10 Mitaksharā — A deprivation of property which is *samānya*, common, i.e. which is held in common or, (also) having regard to its general characteristic of being incapable of appropriation at will, which is another's property is a *Sāhasa*. Whence? *prasabhabaranat*, on account of a forcible carrying away in short, on account of a deprivation by a show of force

15 This is what is (intended to be) said. By disregarding the Royal sanction, or the protest of the people whatever act of beating, or asaulting the wife of another and the like is committed in the presence of State Authorities or the ordinary people, all that is a *Sāhasa* this is the nature of a *Sāhasa*. Therefore even in the case of a deprivation of property which is common or which is another's, there is a *Sāhasa* on account of the same being done by means of a show of force

20 The characteristics of a *Sāhasa* have been described by Nārada<sup>1</sup> also. 'Whatever act is performed by force by persons inflamed with (the pulse of) strength is called a *Sāhasa*, *sahah* means force in 'this world'. The *Sāhasa* of this description, although it is closely allied to theft, abuse assault and seduction of women, still differs  
25 from these on account of the special element of show of excessive force and so has been specially mentioned with the object of (laying down) excessive punishments

Of that also after having laid down a threefold division into the lowest and the others and with a view to demonstrate the different punishments the characteristics have also been described by the  
30 same Sage<sup>2</sup>. "That again is declared to be threefold in the *Sūtras* (1) (*Sāhasa* of) the first muddlemost, and the highest degree. The definition thereof has been given separately (3) Destroying reviling, dishonouring or otherwise (injuring) fruits, roots, water and

“the like, or agricultural utensils, is declared to be a *Sāhasa*, of the  
 “first degree (4) (Injuring) in the same way clothes, cattle, food,  
 “drink, or household utensils, is declared to be a *Sāhasa* of the  
 “middlemost degree (5) Taking human life by means of poison,  
 “weapons, and the like indecent assault on another man's wife, and  
 “whatever other (offences) encompassing life (may be imagined) is  
 “called a *Sāhasa* of the highest degree (6) The punishment to be  
 “inflicted for it must be proportionate to the heaviness of the crime,  
 “(so however as) not to be less than a hundred (*Panas*) for a  
 “*Sāhasa* of the first degree, whereas for a *Sāhasa* of the middle  
 “most degree the punishment is declared by persons acquainted with  
 “the *Sastra* to be not less than five hundred (*panas*) (7) For a  
 “*Sāhasa* of the highest degree, a fine amounting to no less than a  
 “thousand *panas* is ordained (Moreover) corporal punishment  
 “confiscation of the entire property, banishment from the town, and  
 “branding, as well as amputation of that limb (with which the crime  
 “had been committed) is declared to be the punishment for *Sāhasa* of  
 “the highest degree (8) ” Corporal punishment and the like punishment  
 “in a *Sāhasa* of the highest degree should be administered cumulatively<sup>1</sup>  
 “or alternatively by a discriminating regard to the offence committed.

Among these, the Author mentions the penalty for a *Sāhasa*  
 which is in the form of deprivation of another's property

Yājñavalkya, Verse 230 (2)

The fine is twice the amount of the value of it, but four-fold when (the  
 offence is) denied

Mittāksharā — Of it, i.e. of the thing taken away, dwiguna twice the  
 amount, mūlyāt of the value shall be danda, the fine He, however who  
 having committed a *Sāhasa* *nibbute* denies saying 'I did not do,' for  
 such a one, a fine is inflicted which is chaturguna four times the value  
 of the thing

From this very rule where a special penalty is laid down it may<sup>3</sup>  
 be inferred that the general rules of punishment laid down in con-  
 nection with *Sāhasa* of the first degree and the like are applicable to  
 cases other than (where there has been) the deprivation (of property).

1 दण्ड — Chastisement which may extend to Capital punishment

2 समस्तवस्तुतक

3 अपक्षे ।

**Viramitrodaya**

“Whatever act is performed by force by a person inflated with  
“( the pride of ) strength is called *Sahasā*, *saha* means force in this  
“ world Theft is a special variety of it The difference between  
5 “( *sahasā* and theft ) is as follows, where the criminal act consists of a  
“ forcible attack it is *sahasā*, where it is done by fraud it is theft  
Thus characterized by Nārada,<sup>1</sup> the Author begins the title of law  
called *Sahasā* which consists of a forcible injury in spite of the know-  
ledge of the owner and which is distinguished from theft

**Yājñavalkya, Verse 230**

*Samanya*, ‘common’, i e, which is held as common property, in  
short which is another’s property. Property of this character such as  
gold etc Of that forcibly carrying away i e dropping with force in  
the presence of the owner. Such a taking away by regard to the  
15 literal meaning is *sahasā*, declared by the word *sahasā*, i e declared in  
the Smritis ‘Here, of that i e of the property twice the value when it  
is snatched away and four-fold when it is denied i e concealed ( 230 ).

**Sūlapāñi**

**Yājñavalkya Verse 230**

20 Common property i e property of a low kind, such as grain etc, or of  
the ownership of the many, of common property such as corn etc Of  
common property also such as corn etc, deprivation in the presence of the  
owner by force i e taking it away by compulsion constitutes a title of  
law known as heinous offences When, however anything is done in the  
25 absence of the owner or is denied after committal that is known as theft  
As says Manu “ ‘It will be an offence of robbery when it is committed  
“ in the presence (of the owner) and with violence, if (it is committed) in  
his absence it becomes theft, as also if it is denied after it has been  
“ taken ‘In the presence’ i e, in the presence of the owner, in the absence,  
30 it becomes theft, ‘denies i e conceals

Nārada<sup>2</sup> having stated five kinds of *Sahasas* such as the homicide  
etc has also stated an act done with violence to be *Sahasā* thus ‘Man-  
“ slaughter, robbery, an indecent assault on another man’s wife and the  
“ two species of assault, these are the five kinds of heinous offences  
35 “ That again is of three kinds etc (see Nārada ch xiv 3-8, see above Mitāk-  
sharāṇṇa p 1276 l 3 to p 1277 l 18 ) Whatever act is performed by force by  
persons inflated with ( the arrogance of ) strength is called *Sahasā*  
( a heinous offence ), *sah* i e force means strength in this world (230)

1 Ch XIV 1 and 12

2 Ch VIII 733

3 Ch XIV 2-8

The Author mentions a rule regarding one causing a *Sāhasa* (to be committed)

### Yājñavalkya, Verse 231

He who causes the commission of a *Sāhasa*, shall be made to pay a double fine; and he who causes it by declaring "I shall pay" shall be made to pay four-fold. 5

Mitākṣharā:—Yah, he, however, who says (to another), "Commit *Sāhasa*", and (thus) *kārayati*, causes a *Sāhasa* to be committed, *dwiguṇam dāṇḍam dāpyah*, shall be made to pay twice the amount of penalty, imposed upon the actor himself. He, moreover, who says 'I shall pay you money', and thus causes a *Sāhasa* to be committed, such a one shall be compelled to pay *chalurganam*, a four-fold fine, on account of the aggravation of the offence. 10

### Vīramitrodaya

The punishment for one who causes a *Sāhasa* is like the one who perpetrates it (himself) So the Author says 15

### Yājñavalkya, Verse 231

He who causes a *sāhasa* to be perpetrated by an order "do the *sāhasa*;" such a one shall be compelled to pay a penalty twice that for the perpetration of the *sāhasa*. "On a possibility occurring of a penalty being inflicted upon you, I shall pay the amount", he who saying thus causes a *sāhasa* shall be compelled to pay four times that for the perpetration of *sāhasa* (231). 20

### Śūlapāṇi

### Yājñavalkya, Verse 231

He etc He who causes by his words etc, 'commit an offence', such a one should be compelled to pay a penalty twice of that for the offence He, moreover, who causes it to be done with the words "I shall give you money, you do", shall be compelled to pay four times on account of the aggravated form (of the offence) (231) 25

The Author mentions a special rule regarding a particular offence for abusing the venerable, etc 30

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The Author mentions rules regarding particular *Sāhasas*

### Yājñavalkya, Verses 232 & 233.

He who abuses or disobeys the venerable, who beats his brother's wife, who does not give what is promised, who breaks open a house (which is sealed) (232); 35

Or who does an injury to his neighbour, or blood relations and the like, for all such offenders fifty *panas* is the fine; this is the invariable rule.

Mitākṣharā :—Of the venerable, *arghasya*, i.e. those who deserve to be respected, e.g. the teacher &c, he who offers an abuse or transgresses their commands, as also he who beats his brother's wife; similarly one who does not pay an amount which was promised, i.e. agreed upon, he, also, who breaks open a house which is sealed; also, he who does an injury to the owners of houses or fields adjoining his own house or field, or to blood relations i.e. those born in his own family—and by the use of the term *ādī*, 'Also', (he who causes injury) to the inhabitants of his own village or country—all these shall be punishable with a fine of fifty *panas*.

Vīramitrodaya

The Author mentions particular punishments for particular *adhavas* Yājñavalkya, Verses 232-233

One who levels an abuse or transgresses the commands of the venerable people such as the preceptor etc; he also who gives a beating to the brother's wife; likewise one who does not deliver something such as gold etc, which has been accepted for delivery from another; he who breaks open a house which is sealed with a signet ( 232 );

One who does an injury to any one of these, i.e. the inhabitants of his own or of the neighbouring village, gentiles i.e. persons born in his own family, and by the use of the word *ādī*, 'et cetera' *śreṇi*; and others also; for these stated before, the penalty is measured by fifty *panas*. Thus has been definitely declared the punishment in the *Dharmasūtra*. By the use of the word *cha*, 'and', is included one who does not indulge in a speech ( 233 )

Sūlapāni

Yājñavalkya, Verse 232

He who abuses and also disobeys the respectable such as the preceptor etc, as also one who beats his brother's wife, similarly he who does not give what is promised, and also one who breaks open a house which is sealed, also one who does an injury to the owners of the fields or houses adjoining his own house or field, as also his relatives i.e. persons born in his family—by the use of the word *ādī* 'and the like', as also persons of his village or country—such a one should be punished with fifty *panas* (233)

Of the *Samantā* such as a betelnutseller and the like as alone are authorized by an association. By the use of the word *Adi* for one causing injury to *Śreṇi* and the like also, a fine of fifty *panas* should be imposed ( 233 )

### Yâjñavalkya Verses 234-237

He who wantonly consorts with a widow, who does not run ( in response ) to a call ( for help ), who causelessly raises a cry ( for help ), he who, being a Chandala touches men of the higher classes (234).

Who feeds Sûdra ascetics on ( the occasions of ) religious or obsequial ceremonies, who pronounces an unproper oath who being unqualified does an act which can be performed by those ( only ) who are qualified (235).

As also he who destroys the virgity of a bull or inferior beasts who conceals common property who destroys the foetus of a female slave (236)

Or whoever being the father, the son the sister and a brother, the husband and the wife the preceptor and the pupil, abandons each the other when ( that other is ) not degraded shall be fined a hundred *pankas* (237)

Mitaksharā — Moreover, he who without a *Niyoga* or a proper appointment has connection with a widow (merely) by self will, or who upon a cry for help being raised by persons frightened by thieves and like others, does not run for help even when he is able, as also he who causelessly raises a cry (for help), he, who being a Chāndala touches a Brahmana or others, also he, who, feeds Śūdra ascetics such as the Digambaris and others at religious or exequal ceremonies, he, also who pronounces an improper oath, *eg* I shall take my mother &c, similarly, one who being unqualified *eg* a Śūdra and the like does an act *eg* study &c which can be done only by one qualified. A bull means a strong bull, 'minor beasts' such as a goat &c one who destroys the virility i.e. the procreative power of these. In the case of the reeling (one who destroys the virility) 'of trees and minor beats &c' — (it should be interpreted thus,) — one who causes the destruction of the fruits or budding blossoms of trees etc, by means of sprinkling asafetida or other drugs, he who conceals common property, i.e. who causes a deception in regard to property which is common, as also one causing the abortion of a female slave is also those who being related as their father etc abandon each the other without being degraded. All these severally deserve to be fined one hundred *panas* each.

## Viramitrodaya

With a view to treat of adultery with women as distinguished from *sāhasa* and although differentiated from *sāhasa* there being comparison between the two, the Author while stating the penalty for that, mentions the penalty for others also with a view to brevity of the composition

## Yājñavalkya Verses 234-37

*Svazchhandena*, 'wantonly', i. e. *stechchhayā*, i. e. 'according to his impulse, having intercourse with a widow, when a cry is raised by those frightened by robbers and others, one who though competent does not run up for preventing it, one who causelessly raises a hue and cry, one being a *Chandāla* touching Brāhmanas or the like, one who feeds the Sudras or the ascetics such as the nude ones and the like at rituals in honour of the gods or of the manes, one who indulges in an improper oath such as "I shall approach the mother if this is false and the like, similarly one unfit such as the *sudra* and the like performing the acts of those who are qualified such as the Brāhmana and others studying the vedas, one who destroys the virility i. e. procreative capacity of bulls or lower beasts, one concealing common property which is undivided, one who destroys the embryo of a female slave, and any one of the following two abandoning the other viz father and son, sister and brother, husband and wife, preceptor and the pupil when the other has not been degraded, such a one — i. e. all these, become liable for a penalty of one hundred panas. The use of the first *śloka* is inclusive of one who raises up a cry even for a reason, by the second use, of one who has fallen, by the third, of the heretics, by the fourth, of a ritual in honour of men, by the fifth, of a bull, by the sixth, of the mother and the son renouncing each other, of the father and son by one alone, for the abandonment of the other Sankha says "He who lustfully abandons those not degraded shall incur the penalty of a hundred. This moreover, is, when the abandonment is by the unlearned, for an abandonment by the learned, however, says Manu' "Neither the mother, nor the father nor wife nor the son should be cast off, one casting them off when they are not guilty of degradation shall be fined by the king six hundred. When the learned cast off each other, a penalty of three hundred should be understood (234-37)



## Sulapani

## Yājñavalkya Verse 234

He who has an intercourse with a widow without an appointment, one who does not run up (for help) when loudly invoked by those oppressed with the fear of robbery as also one who causelessly raises up a cry, one who being a *clant* *la* touches the Brahmana and the others 5

## Yājñavalkya Verse 235

He also who causes the ascetics such as the *digamīaras* etc to be fed at rituals in honour of the Gods and the manes he also who utters an improper oath e.g. I shall have recourse to mother and he also who being himself unfit such as a *Sūdra* etc does acts for which he is not fit such as imparting education etc (235) 10

## Yājñavalkya Verse 236

*Prśah*<sup>1</sup> a bull : e a fat bull other animals such as goat etc one who destroys the virility : e the procreative capacity of these For the rearing trees lower animals etc one who by the use of medicaments such as *reaphostida* etc causes the fruits and the flowers of trees to fall one who causes deception regarding common property one who causes abortion to a female slave (236) 15

## Yājñavalkya Verse 237

Those also such as the father and the like although not degraded abandon each other all these shall be liable to pay a penalty of a hundred *panas* (237) 20

On the occasion of discussing *Sūtras* the Author mentions a penalty for similar offences by the washermen and like others 25

## Yājñavalkya Verse 238

A washerman wearing the garments of another shall be fined three *panas*, and in cases of a sale, hiring out pledge, or a loan on request ten *panas*

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*Mutaksharā* — *Nejakah* a washerman is one who cleans clothes (by washing), such a one if he himself puts on clothes made over to him for being washed then should be fined three *panas*. He moreover who sells them, or hires out e.g. (with an agreement such as) This 'cloth is being given to you for such a period so much money should be given to me, and who thus lets out on hire or makes a pledge of it, or gives it to his relatives and friends upon request, such a one shall be fined ten *panas* for each offence. Those clothes moreover, must be washed 30

1 वृ-वर्जित—a sc on bull

on a smooth plank of the silk cotton tree (*S'mālī*), not on a stone, and they should not be exchanged,<sup>1</sup> nor should they be allowed to be worn in his own home otherwise he shall be punished, *vide* the text of Manu<sup>2</sup>

"A washerman shall wash gently on a smooth board of the silk cotton wood, he shall not return the clothes (of one person) for the clothes (of another), nor allow anybody (but the owner) to wear them"

When, moreover, he destroys them through a mistake, then the rule stated by Nārada<sup>3</sup> should be observed. "An eighth part of its value is the depreciation for a wearing apparel washed for the first time, a fourth, when (it is washed) twice, a third, (when washed) three times, and a half (when it is washed) four times (8). After the depreciation of a half (of the value), a quarter shall be (considered) as reduced thenceforth till the fringe is tattered, and the cloth becomes worn. In the case of a tattered cloth there is no rule regard-  
ing the reduction of its value"

Thus for a cloth which was purchased for eight *panas*, and washed only once, and which is lost, the price to be paid should be the (quantity of) *panas* minus an eighth part—i. e. one *pana* (of the cost price), for a twice-washed cloth, however, less by a quarter, and for a thrice washed cloth, less by a third part, for a cloth washed four times a half (of the price): i. e. four *panas* should be given. Thereafter, the remaining fraction of the price lessened by a quarter for each wash should be given, until it becomes tattered. Of a tattered cloth, moreover, which is destroyed, the price should be determined at the option

#### Vīraśūtradāya

Now on the occasion of discussing *Sāharas* the Author mentions penalties for offences similar to these by means of thirteen verses

#### Yājñavalkya Verse 238

*Nejakak*, 'a washerman', i. e. one who washes clothes. In the reading *rajaka* also, the same is the meaning. When putting on the silken cloth of another given to him for washing, he shall be made to pay the penalty of three *panas*.

He, however, who either sells or hires out for use with an agreement for the hire, or who pledges it for a fixed period, or who offers to his relatives for ornamentation on request clothes made over to him for washing, such a one shall be made to pay ten *panas* (238).

1 अग्रतः means inversion, perversion, Balambhatta

2 Ch VIII 396

3 Ch IX 8-9

## Śūlapāṇi

On the occasion of treating the *Sahasas* the Author mentions a penalty for the washermen and the like in regard to offences of a like nature

## Yājñavalkya, Verse 238

A washerman, i.e. one who cleans the clothes, such a one if he himself puts on clothes which have been made over to him for washing, then he should be fined three *panas*. One, moreover, who sells these or pledges on an agreement that "this is being given to you for use for a particular period, you should give me so much money", in this way one who pledges it or creates a charge on it, or one who gives it over to his relatives on a request, such a one should be punished with ten *panas* for each offence

These clothes, moreover, should be washed on a smooth plank of the silk cotton tree and not on *ja* stone. As *Manu*<sup>1</sup> has observed "Nor shall he return the clothes (of one person) for the clothes (of another), nor allow anybody to wear them" (236)

## Yājñavalkya, Verse 239

For witnesses in a dispute between a father and a son the fine is three *panas*. Also for him who engages himself therein, for such a one also, the fine is eight fold

*Mātākṣarā* — In a dispute between a father and a son, he who undertakes to be a witness, and does not ward off the dispute, such a one shall be fined three *panas*. He, moreover, who in a dispute with a wager between them, becomes a surety—and by the use of the term *cha*, 'also', he who fans the dispute between them, even he,—shall be fined an amount eight times three *panas*, i.e. twenty four *panas*. In the case of (a dispute between) a husband and a wife, or like others, this same (rule as to the) fine must be followed

## Varamitrodaya

## Yājñavalkya, Verse 239

In a quarrel between the father and the son, one who undertakes to be a witness and does not ward off the quarrel, for him the penalty is measured by three *panas*. He, moreover, who intermeddles in their dispute and aggravates the quarrel, for him — by the use of the word *api*, 'even', in such a dispute for the surety — a fine of eight *panas* should be administered (239)

## Śūlapāṇi

## Yājñavalkya, Verse 239

For witnesses in a dispute between a father and son the penalty is three *panas*. For one who intermeddles, the penalty is eight *panas* (239)

## Yājñavalkya, Verse 240

He who falsifies scales royal mandates measures, and also standard coins, and also he who uses these, shall (both) be forced to pay the highest amercement

- 5 *Mitāksharā*—*Talā* scales, i.e. the weightment rod *Sāsanam*, a Royal mandate, has been described<sup>1</sup> before *Māna* a measure, such as a *prastha*,<sup>2</sup> a *drona*, and the like *Nanakam*, a standard coin i.e. (money) stamped with (the royal) mark or the like, such as a *dramma*,<sup>3</sup> a *niṣka*, or the like

- 10 In the case of these, he who *kūlakri* falsifies them i.e. who makes them different from the general standard of the country, whether less or more, or stamps (money such as) *dramma* and the like in an unusual manner, or alloys it with copper or other (base metal) and he also who uses them knowing them to be false, both of these shall each be fined in the highest amercement

15 *Viramitrodaya**Yājñavalkya, Verse 240*

*Talā*, 'scale' i.e. the weighing rod, *sāsana*, 'the royal command', has been mentioned before, *manam*, 'measure', such as *prastha*<sup>2</sup> etc, *nanakam*, 'coin', marked with signets such as the *niṣka*, *dramma* etc

- 20 Of these one who manufactures a counterfeit and fraudulently causes delusion in another, and one who even though knowing, enters into transactions with these counterfeiters, such a one should be compelled to pay the highest amercement By the use of the first *cha* is included one who causes the counterfeit, and by the second *cha*, one who  
25 deals with a counterfeit (240)

*Śūlaspānt**Yājñavalkya Verse 240*

One who manufactures false scales and with these who knowingly makes sales and purchases coin such as *niṣka* etc (240)

1 i.e. in the *Acharadhyaya* Verses 318, 319, 320 page 580 Mr. Colebrooke gives—'Market rates—(literally, Commands) the king's written precepts regulating market rates'

2 *Prastha Drona*—kinds of measure. A *Prastha* is a measure having thirty two *pālas* whilst a *Drona* is either the same as an *Ādhāna*, or equal to  $\frac{1}{4}$  *Ādhāna* or  $\frac{1}{2}$ th of a *Ahara* or 32 or 64 *shas*.

3 *Dramma* (Colebrooke reads *dharmā*)—a *dachma* (i.e. of the Greek *dramm*)

*Niṣka*—A golden coin of different values but generally taken to be equal to one *Ahara* or *Santana* of 16 *māṣas* or also a weight of gold equal to 108 or 150 *muṣaras*

The Author propounds a rule regarding the examiner<sup>1</sup> of coins  
Yājñavalkya, Verse 241

He who declares good money bad, as also he who declares bad money good, that examiner of coins shall indeed be compelled to pay the highest amercement

Mitāksharā — That examiner of coins, moreover who declares a *dramma* or other coin good even when it is alloyed<sup>2</sup> with copper or the like, or declares a good coin to be false, such a one shall be fined in the highest amercement

Vṛtamiśraśāstra

Yājñavalkya, Verse 241

That examiner of coins who declares a faultless (coin) to be counterfeit, and a counterfeit coin to be faultless, shall be made to pay the highest amercement. By the use of the word *cha* is included one who although knowing it to be counterfeit says "I do not know" (241)

Śūlapāṇi

Yājñavalkya, Verse 241

The examiner of coins is one who tests the marks. The rest is clear

The Sage mentions a rule regarding a physician

Yājñavalkya, Verse 242

A physician falsely posing himself as such shall be fined in the first amercement in the case of lower animals, in the middlemost, in the case of men; and in the highest amercement, in the case of royal persons

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Mitāksharā — Bhṛshak a physician moreover, who, *māhyā, falsely*, is even when he is ignorant of the science of medicine, yet for the purpose of making out a livelihood, poses himself as a duly qualified physician, and treats medically lower animals men or royal persons, such a one shall be fined in the first, middlemost, and the highest amercements respectively

There also the amount of the fine whether it should be small or great, must be determined in the cases of lower animals &c by regard to the value (of the particular beast) or the *varṇa* (of the man), or the close relationship to royalty

1 Colebrooke reads as if the introductory remark of Viṣṇuśaṅkara referred to the coins and not to the person testing them

2 i.e. which is over alloyed &c

## Vīramitrodaya

## Yājñavalkya, Verse 242'

- An apothecary falsely posing as one dealing with diseased animals  
*i. e.* animals such as the cow and the like, and giving them treatment,  
 5 the first amercement, and posing himself falsely with reference to men  
 not connected with royalty, the middle amercement; and the apothecary  
*i. e.* the physician posing falsely with royal personages shall be made  
 to pay the highest amercement (242).

## Śūlapāṇi

- 10 . Yājñavalkya, Verse 242

"Lower animals" such as the cow etc. and in regard to ordinary, such  
 as man, the middle (amercement) (242)

## Yājñavalkya, Verse 243

- 15 He, moreover, who restrains one who ought not to be restrained, or  
 releases one who is restrained before the decision (in his case) is arrived  
 at, such a one shall be fined in the highest amercement.

- Mitākṣharā:—He, moreover, who restrains without the king's com-  
 mand one who does not deserve to be restrained and who is innocent;  
 as also he who releases one who was restrained being summoned in  
 20 connection with a trial at law, even before yet the trial was conclud-  
 ed, shall be compelled to pay the highest amercement.

## Vīramitrodaya

## Yājñavalkya, Verse 243

- One who restrains one who does not deserve to be restrained, and  
 25 who being in authority discharges *i. e.* does not restrain one who  
 deserves to be restrained, as also one who being authorised lets off one  
 who has been summoned for a judicial trial when the trial has not  
 been decided, shall be compelled to pay as penalty the highest amercement.  
 By the use of *cha* several times is included one who beats one  
 30 who should not be beaten, as also one who releases one who has been  
 imprisoned (243).

## Śūlapāṇi

## Yājñavalkya, Verse 243

- 35 Having summoned one in whose case a decision has not been given,  
 for the giving of a decision (243).

## Yājñavalkya, Verse 244

He who abstracts one-eighth share by a (false) measure or balance, such a one shall be compelled to pay a fine of two hundred *panas* and (proportionately) determined (according) as the loss is greater or less

Mitāksharā — That grocer, moreover, who from paddy, cotton or any other vendible commodity abstracts an eighth part by (using) a false measure, or a false balance, or by any other means, such a one shall be fined two hundred *panas*. The smallness or greatness of the fine must be<sup>1</sup> determined by regard to the greater or less quality of the portion abstracted

## Vīramitrodaya

## Yājñavalkya, Verse 244

That grocer who in the case of vendible articles like the paddy, cotton etc. by a counterfeit measure or by a counterfeit balance deprives people of an eighth part, such a one should be made to pay the penalty of two hundred *panas*. In the case of more or less of the eighth part taken away, the penalty should be determined according to the less or greater loss caused. By the word *api*, 'even', is included the deception in counting and the like, by the use of the word *cha* is included the greater or less portion of the part taken off (244)

## Śūlapāni

## Yājñavalkya, Verse 244

*Mamena* : *e* by measure such as a *prastha* etc for an increase or a decrease and of the same when an eighth has been increased or decreased shall be compelled to pay a penalty as may be determined after investigation (244)

## Yājñavalkya, Verse 245

He who adulterates with articles of inferior quality, medicines, oil, salt, perfumes grain, sugar and the like which are kept for sale, shall indeed be compelled to pay sixteen *panas*

Mitāksharā — Bhesajam, a medicine, i.e., medicinal drug, snehah, oil, such as clarified butter and the like, 'articles of perfumery,' such as *urna*<sup>2</sup> and the like. The term *ādī* 'and the like' comprehends asafoetida, pepper and the like. In the case of these the fine for mixing inferior substances with these for the purpose of sale, is sixteen *panas*

1 So that if the fraud be less than an eighth portion, the fine shall be less than two hundred *panas*, and greater if the fraud exceed the eighth portion.

2 Known as *lāus* or *uālā* (गुल in Marathi) — the root of the (श्वेत) *Virena* grass — *Andropogon muricatus*

## Vīramitradaśya

## Yājñavalkya, Verse 245

- 5 *Bhaishajyam*, 'medicament', i.e. medicinal articles, *snehah*, 'oily things, such as ghee etc., *lavanam*, 'salt, such as the rock-salt, *gandhah*, 'perfume, such as *usira* etc. the corn and jagg are well known, the meaning of the word *ādī* (indicates) *asaphotida*, *marich*, pepper etc. In these articles of sale one mixing an article of inferior quality for the purpose of sale shall be compelled to pay sixteen *panas*. By the use of the word *tu*, 'however', is excluded the penalty of two hundred or the like stated before (245)

## Sūlapāni

## Yājñavalkya, Verse 245

One effecting a sale after mixing an article of inferior quality shall be punished sixteen *panas* (245)

## Yājñavalkya, Verse 246

- 15 When earth hide gem, yarn iron, wood, bark, or cloth, which is not of good quality, is made (to appear as) of good quality, the fine is eight times the amount of the sale
- 20 *Mitākṣharā* —Moreover, when a superior quality does not exist in articles such as hide &c. it is regarded as being *ajñē*, not of good quality, for giving such a thing the appearance of (a substance of) good quality, *jñākarane* i.e. for the purposes of the sale, making it resemble a thing of a valuable kind, by the addition of (a different) colour, colour or juice, as for instance counterfeiting fragrant *Āmalakā*<sup>1</sup> by adding the odour of the *Mallikā*<sup>2</sup> flower to (a piece of) earth, or the tiger-skin by adding vivid colours to a cat skin, or a ruby by tinging a *sphatikā* bead with another hue, or a silken thread, by giving a glossy appearance to a cotton thread, or silver, by bringing on a bright colour by polishing black metal, or sandal wood by adding the odour of sandal to a piece of *Bahra*<sup>3</sup> wood, or
- 30 passing the bark of *kanḍola*<sup>4</sup> for that of a clove, or counterfeiting a silken cloth by creating a glossy appearance on a cotton cloth, (in such

1 Known in Marathi as *amla* ( *Āla* ) *Aegle marmelos undulata*

2 *Mallikā* is a kind of jasmine *Phyllanthus emblica*

3 Known as the *Bela* ( *वेल* ) tree *Aegle Marmelos* or wood apple

4 *Kanḍola* is the name of a plant bearing a berry, which also is known as *kanḍola*



cases) the fine must be understood to be eight fold of the commodity (offered) for sale i.e. the earth, leather and the like, which is made to resemble (another commodity). \_\_\_\_\_

Vīramitrodaya

Yājñavalkya, Verse 246

In the case of earth etc. as articles for sale and not of the required quality : i.e. when it is not of the quality which will induce the higher price, one by bringing on a bright colour etc. with a view to make it appear of the quality which will induce a higher price, should be fined eight times the price of the best article of the kind ( 246 ).

Sūlapāni

Yājñavalkya, Verse 246

Of these which are of a lower value, one who through covetousness counterfeits into one of good quality shall be fined eight times the amount of the price received, as for example, mixing earth with the fragrance of the *mallikā* flower and selling it as fragrant *amalaka*, and such other acts may be inferred

Yājñavalkya, Verses 247-248

He who pledges or sells a sealed casket or a valuable vessel which is artificially prepared, shall be fined thus (247)

For (a thing the value of which is) the fraction of a *pana*, fifty (*panas*), and for a *pana* a hundred ; for two *panas*, two hundred , and when the value is higher, (the fine is) higher

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**Mitāksharā** — Seal means a cover. That which has the cover of a seal is a sealed casket *samudram Parivartanam artificial preparation*, : i.e. transformation. He who exhibits one casket ( : i.e. one ) containing pearls, and changes it by a sleight of hands for another casket filled up but containing *Sphatikās* (or glass stones), as also he who counterfeits a valuable commodity such as the musk and the like, and either sells it or deposits it as a pledge the determination of fine for such a one should be understood as follows. If the actual price of the counterfeited musk or other article is the fraction of a *pana*, *pane bhinne*, : i.e. less : i.e. if its value is less than a *pana*, the fine for a sale in which the counterfeited article was sold shall be fifty *panas*. In the case where, however, the price is a *pana*, the fine shall be a hundred, and in the case of an article of the value of two *panas* two hundred ; and in this manner the amount of the fine should be increased according as the price is (determined to be) higher.

Vīramitrodaya

Yājñavalkya, Verses 247-248

- 5 *Mudrām*, 'seal', i. e. the cover, of that having been exhibited for sale etc., at the time of the sale with that a cover with a seal full of pearls, one who changes it by a sleight of the hand etc. for a pot full of bright pebbles etc., etc. (247-48).

Śūtapāṇi

Yājñavalkya, Verse 248

- 10 For one who misappropriates a valuable vessel or a sealed casket, or artificially prepares saffron etc. and who sells it, the determination of the fine should be made. How should it be made? So the Author says when it is less by a *pana* the penalty shall be fifty *panas*; when it is a full *pana* (the penalty is) hundred *panas*. For two *panas*, two hundred For a value exceeding this, the penalty should be made according to the excess.

13

Yājñavalkya, Verse 249

For (traders) combining to maintain a price to the prejudice of labourers and artisans, although knowing the rise or fall of the prices, the fine shall be the highest amercement.

- 20 *Mitākṣharā*:—Although knowing the increase or decrease in the market rates as regulated by the king, if traders combine, i. e. join together, and out of greed for profit, maintain another price, which is detrimental to the labourers, *kārūṇam*, such as the washermen and others, or *śilpinām*, the artisans such as painters or sculptors and the like, they shall be fined one thousand *panas*.

25

Śūtapāṇi

Yājñavalkya, Verse 249

- 30 For grocers fixing a price for the corns etc. without the consent of the king and in a manner which would be oppressive, as also for the artisans and manufacturers for effecting an increase or decrease in the price declared by the king, the penalty should be one thousand *panas*. Manufacturer, such as the weaver; *Śilpi*, 'artisan', i. e. sculptor (249).

## Yājñavalkya, Verse 250

For traders combining to obstruct (the sale of) a commodity by (demanding) a wrong price, or for selling it, the fine laid down is the highest amercement.

Mitākṣharâ:—Moreover, those traders who combining together, obstruct (the sale of) a commodity arrived from a foreign country, by demanding it at a wrong price, *anargheṇa*, i. e. at a lower value, or sell it at a higher price, the highest amercement or fine for these has been laid down by Manu and others<sup>1</sup>.

## Vîramitrodaya

## Yājñavalkya, Verses 249, 250

Of those who fix an inconvenient price i. e. the rate for corns etc. and of the traders who bring about the depreciation or increase of the price fixed by the king, the penalty for these has been stated by the sages to be measured by a thousand *paṇas*. So also for those traders obstructing the sale of a valuable commodity by (setting up) a small price, and those who purchase by deceit etc. or those who sell a commodity of small value for a high price, the penalty laid down is the highest amercement (249, 250).

At what price, then, must a commodity be sold? so the Author says

## Yājñavalkya, Verse 251

The sale or purchase should be (conducted) at that price which is fixed by the king; the surplus made therefrom is understood to be the legal profit of traders.

Mitākṣharâ:—Rājani, by the king, when he is near *sthāpyate yorghaḥ*, whatever price is determined, i. e. is regulated by him, by such a rate the sale and purchase must be made every day. That surplus which has been derived from it is *misravaḥ*, the surplus made, i. e. the special balance i. e. the surplus over the rate as regulated by the king is the only legal profit of the traders and not the one made from rates determined by their own fancy. A special rule, has, moreover, been indicated by Manu in the matter of regulating prices: "Once in (every) five nights, or at the close of each fortnight or month, the king shall settle the prices in the presence of these (i. e. the traders)."

1. 'The meaning which results therefrom is, that a fine is directed for the offence of raising or lowering the market rate fixed by the king. The sage declares that purchase and sale should be conducted 'according to the prices regulated by the Sovereign' (Goldbrooke).

2. Ch. VIII. 402, Some editions of Manu read *राजं यथावत्*—

## Viramitrodaya

## Yājñavalkya, Verse 251

- Now with the avoidance of these penalties how can they have their subsistence? So the Author proceeds "by the king etc. That price which has been fixed by the tradesmen in the presence of the king with his sanction, with that price should the sale and purchase be made by the merchants every day. Therefore the residue which would remain from the purchase and sale, i.e. the excess part, that alone, should be the source for the subsistence of the tradesmen dealing in profits. Here Manu<sup>1</sup> states a special rule. "Once every five nights, "or at the close of each fortnight or a month, the king should fix the "prices in the presence of these, i.e. the traders (251)

## Śūlapāni

## Yājñavalkya Verses 250-251

- 15 Whatever price is fixed by the king with that alone should the sale and purchase be effected. Whatever is realised by the sale of the articles of merchandise in excess of the original amount has been declared as the small profit for the traders

## Yājñavalkya, Verse 252

- 20 On commodities of one's own country a trader shall take five per hundred and ten on those from foreign countries when he buys and sells again immediately

- Mitāksharā — Moreover, he who purchases a commodity obtained in his own country and sells it such a one shall take a profit of five per cent i.e. five in one hundred *panas*. On a commodity however, obtained from a foreign country he should take as his profit, ten *panas* on an original cost of one hundred *panas* (on) a commodity the sale of which is brought about immediately on the day of purchase

- 30 But he again who sells at a subsequent time for such a one, a greater profit shall be allowed as a longer time elapses. And thus the market prices of commodities of his own country should be so regulated by the king that there may be a profit of five *panas* in a hundred *panas* on the regulated price

## Śūlapāni

35

## Yājñavalkya Verse 252

For an article of merchandise in one's own country the trader should recover five per cent as profit while for an article imported from another country, ten per cent provided the sale and purchase occur immediately. In the case of delay, there is no rule (252)

## PAGE 140\*

The Author mentions the principle for determining the price of a foreign commodity

## Yājñavalkya, Verse 253

Adding the incidental charges to the cost of the commodity, let the price be fixed which shall be equitable both to the buyer and the seller

Mītākṣharā — On a commodity arriving from another country, after calculating the charges which are incurred for carrying it from and back to the foreign<sup>1</sup> country, as also the customs and other dues and adding these to the original cost of the commodity, the price should be determined by the king<sup>2</sup> which will be equitable both to the buyer and the seller, so that a profit of ten per cent may be made

## Vīramitrodaya

Of what kind, from what commodity is this residue? So the Author says "In one's country etc

## Yājñavalkya Verses 252-53

If after purchasing in one's own country only it is sold, there, for a commodity of the value of hundred *panas*, five *panas*, but for having purchased in another country and brought in one's own country if a commodity is sold, there the trader shall take ten *panas* as the profit if he sells the commodity not after a long interval after its purchase. By reason of its being in a distant country when there is long delay for a sale having added the expenses for the importation, preservation etc of the commodity and thus adding to the original cost on a hundred of that by regard to the difference due to the native and foreign country, the king should fix a price which should be fifteen per cent in excess and which should benefit the seller and the purchaser. By the use of the word *cā* are added the citizens also by the use of the word *eva*, 'only', is excluded (the possibility of) neglect by the king in the matter of fixing the price. Here other penalties in regard to other subject matters are not stated for fear of adding to the bulk of the book

Thus ends the Chapter on *Sahasas*

## Śhīlapāni

## Yājñavalkya Verse 253

For an article of merchandise which has been received from a mountainous and distant country whatever has been incurred as expenditure etc the price of that should be determined by thousand folding the same in such a manner that it may not be detrimental to the vendor or the purchaser (253)

1 In this instance another or a foreign country should not be assumed by a difference in language or the intervention of mountains or rivers but by the actual distance by *legends*

2 Cf. Manu Ch VIII 401 where a general rule has been laid down,

## CHAPTER XXI

## Non-delivery after Sale

Having finished a topic which incidentally arose, the Author now introduces the chapter on Non-delivery after Sale. Its characteristics, moreover, have been stated by Nārada<sup>1</sup>: "When a commodity has been sold for a price and is not delivered to the purchaser, it is termed 'Non-delivery of a sold chattel—a Title of Law.' There, after mentioning the two-fold division of vendible things according as they are movable or immovable, its six-fold character has been demonstrated by the same Author<sup>2</sup>: "In this world vendible property is of two kinds, movable and 'immovable' (2). The rule regarding delivery and<sup>3</sup> non-delivery of 'merchandise is declared six-fold by the learned viz. (What is sold) 'by tale, by weight, by measure, according to work, according to its 'beauty, and according to its splendour (3)." 'By tale' as the betel-nut or the like. 'By weight' such as gold, musk, saffron and the like. 'By measure' such as rice or the like. 'According to work' such as a horse, buffalo and the like as determined by the burden carried or the milk yielded by them. 'According to its beauty' such as a prostitute &c. 'According to its splendour' i. e. according to their lustre such as an emerald, a ruby or the like.

The Author mentions a fine for one who having sold a merchandise of (any of) these six kinds, does not deliver it

Yājñavalkya, Verse 254

He who, having received the price of a thing sold, does not, however, deliver it to the buyer, shall be compelled to deliver it together with interest; or with the foreign profit, to one who has come from a foreign country.

Mitākṣharā:—That merchandise of which the price has been received by the seller is *grhitamūlyam* one, the price of which was received, if the seller does not deliver such a thing on demand to a local purchaser, and if that merchandise bore a higher price at the time of the sale, but is obtainable at a low price at another time, then the seller shall be compelled to pay to the buyer the article together with the excess in value of the commodity—whether movable or immovable—over the one to which it is reduced. When there is no difference in

1. Ch. VIII. 1.

2. Ch. VIII. 2-3.

3. *Dāna* is delivery and *Ādāna* is non-delivery, Dr. Jolly translates it as gift and receipt, and so does Colquhoun III. 3. 3.

the price of the commodity and its original price, but the commodity retains the same price at which it was agreed to be sold at the time of the (contract of) sale, the seller shall be compelled to make over to the buyer the merchandise itself together with the profit which a seller may have made *e. g.* two, three, or the like 5 per hundred as already discussed, or otherwise according to the option of the seller. As says Nārada<sup>1</sup>: "If there has been a fall in the market value of the article in question, the purchaser shall receive both the article itself together with the difference in value. This law applies to those who are inhabitants of the same place; 10 but to those who travel abroad, the profit arising from (trading in) foreign countries shall be made over (as well)."

When, however, on account of a rise in the price of the commodity, there is a diminution in (the value of) the thing, then the seller must be compelled to deliver over the thing itself together with the 15 charges for enjoyment of the thing itself such as in the case of cloth, for wearing it, and in the case of a house, for comfortably dwelling in it, and the like. As says Nārada<sup>2</sup>: "If a man sells property for a certain price, and does not hand it over to the purchaser, he shall have to pay its produce, if it is immovable, or the profits arising from it, 20 if it is movable property."

Possession by the seller is declared a decrease, as the thing loses in value from the point of view of the buyer. The decrease (here comprehended) is not any destruction of property such as the demolition of a wall, or the like; since that has already been mentioned in<sup>3</sup>: 25 "If the article should have been injured, or destroyed by fire, or carried off, the loss shall be (charged) to the seller alone, as he did not deliver (it) after it had been sold (by him)."

When, however, such a purchaser has come from a foreign country for taking away the merchandise, then, 30 PAGE 141\* the seller must be compelled to deliver over the thing to the buyer together with such profit as might have been made by one taking the merchandise and selling it in a foreign country.

This rule, however, regarding the delivery of a thing purchased shall be observed in the absence of a rescission. When, however, 35 there is a rescission, the rule must be followed as laid down by Manu<sup>4</sup> in: "If (anybody), after buying or selling anything &c."

## Śālapāni

## Yājñavalkya, Verse 254

- He who does not deliver an article of merchandise of which the price had been received by him, such a one shall be compelled to pay to the purchaser the price together with the interest, if that is received from the country. If, however, it was received from another country then he shall be compelled to pay together with the profit thereon. Vishnu<sup>1</sup> says 'One who having received the price of a thing sold, does not deliver : e does not give to the purchaser, such a one shall be compelled to pay to him together with interest, and he should be punished by the King with hundred 'panas' (254)

## Yājñavalkya, Verse 255

- A commodity, even if sold once may be sold again, if the first purchaser do not take it, and if there is loss on account of the fault of the purchaser, the same shall be his alone

- Mitāksharā — Moreover, when, however, the purchaser, repenting of his purchase, does not desire to take delivery of the commodity sold, then the commodity even when sold (once) may be sold to any other. Also when the purchaser does not accept (delivery of) a thing when (it was) offered by the seller, and if the commodity is destroyed by act of God or of the king, then the loss will be of the purchaser alone, since the loss happens through the fault of the purchaser in refusing to accept the commodity.

## Śālapāni

## Yājñavalkya, Verse 255

- When an article has been sold and the first purchaser does not accept, it should be sold (again). If there is any depreciation through the fault of the purchaser then that is of the purchaser himself (255)

## Yājñavalkya, Verse 256

- Should a commodity be injured by act of God or of the king, the loss shall be of the seller alone if he did not deliver it on a demand

- Mitāksharā — Moreover, when, however, the seller does not deliver a thing even upon request by the buyer, even when he has not rescinded (the sale), and it is injured by an act of God or of the king, then such loss is of the seller alone. Therefore another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer



## Sūlapāni

## Yājñavalkya, Verse 256

If through the act of king or God any blemish occurs in the article any depreciation that follows is of the seller only, if it is not delivered to the purchaser who was asking for it. It follows, therefore that if the purchaser does not accept when it is being delivered, then the fault is of the purchaser (256)

5

## Yājñavalkya, Verse 257

If a man sell a commodity to one, when it had already been sold to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing

10

Mitāksharā -- Again, he who sells or delivers a thing to one when it had already been sold to another, and even without rescinding (the first sale), or sells a commodity which has a flaw, by patching up the flaw, then a fine double in amount of the price of the commodity must be understood. Nārada<sup>1</sup> also has stated a special rule in such a case "When a man sells something to one person and delivers it to another person he shall be compelled to pay double the amount and also a fine of an equal amount (8). When a man exhibits a faultless thing but sells one having a flaw, such a one shall be compelled to pay twice its value and also an equal amount as fine (7)"

15

20

The whole of this law is to be observed in the case of a commodity, for which a price has been paid. In the case of a commodity, however, for which no price has been paid, excepting such special agreement as may have been entered into under the terms of the merely verbal negotiations between the seller and the buyer, there is no liability for entering (into a new transaction) or receding (from one already entered into). As says Nārada<sup>2</sup> "Thus has the law been declared with regard to a merchandise for which the price has been tendered, when the price has not been tendered, there is no rescission<sup>3</sup> to be imputed to the vendor, except in the case of a special agreement"

25

30

1 Ch VIII 8-

2 Ch VIII 10

3 Dr. Jolly's edition reads चरितम्. This appears to be a better reading. But all the editions of the Mitāksharā read चरितम्.

### *Vīramitrodaya*

Now "when a commodity has been sold for a price and is not  
"delivered to the purchaser, it is termed 'Non-delivery after sale' A  
"title of law," thus characterized by Nārada<sup>1</sup> the Author treats of  
5 the title of law called 'Non delivery after sale'

### *Yājñavalkya Verses 254-257*

When from the purchaser the price has been received by the seller  
himself, if he does not deliver the same to the purchaser, then he should  
be compelled to deliver the commodity to him together with the increase  
10 The increase has been stated by Nārada<sup>2</sup> "If a man sells property for a  
"certain price and does not deliver it to the purchaser, he shall pay its  
"depreciation if it is immovable, or the profits if it is a movable  
"property. *Kāṣṭhāyam*, 'depreciation' i.e. (as for) possession; profits  
such as service etc

15 By the use of the word *eva*, 'only', (however) is understood to be  
in the absence of a repentance by the purchaser. On a repentance  
by him, however, the rule laid down by Manu<sup>3</sup> should be followed  
"If anybody in this world after buying or selling anything repent  
'(of the bargain), he may give or take back that commodity within  
20 "ten days Nārada<sup>4</sup> "If there is a fall in the market value itself of the  
"article, the purchaser shall receive both the article itself and the  
"difference in value This law applies to those who are inhabitants of  
'the same place, but to those who travel abroad, the profits arising from  
'(trading in) foreign countries shall be made over. Viśnu<sup>5</sup> 'He who  
25 "does not deliver to the purchaser a commodity the price of which has  
"been received by him, shall be compelled to deliver it with interest  
'and he shall be fined hundred panas by the <sup>6</sup> (254)

When even after the commodity was sold, it was  
the first purchaser on account of his change of mind not taken over by  
30 of inspection or after that time, while that commodity is being sold if  
there is a depreciation in the value of the commodity, the depreciation  
being sold if  
defect occurring in it by reason of the fault of the purchaser or of a  
partly inspecting it or by an act of God or of the purchaser not pro-  
depreciation will be of the purchaser only. If when, then that  
35 demanded it and the seller did not deliver, then the loss is of the purchaser  
himself This is the meaning The word *api* is used in the sense

1 Ch VIII 1

2 Ch VIII 4

3 Ch I d in the sense

4 Ch VIII 5

5 Ch V 1-2 p 126-27

6 257

of opposition. The use of the word *eka*, 'only', twice, discriminates the purchaser and the seller, by the use of the word *hi* the Author intends the cause for the depreciation.

Without expressing disagreement if the first purchaser through confusion etc does not take delivery if the commodity is delivered in the hands of another after the acceptance of the price or if the commodity having a fault has been sold as faultless there the punishment shall be double of the price of both the commodities by the use of the word *eka* is added that to the purchaser also double that of the price should be given. That says Narada<sup>1</sup> He who after having sold to one delivers it to another shall be compelled to pay double of that amount and also a fine of an equal amount (6). This law has thus been declared with regard to a merchandise for which a price has been paid, where the price has not been tendered there is no rescission to be imputed to the seller except in the case of a special agreement (10). By the use of the word *tu* 'however', is excluded (a transaction) where the price has not been received but the sale has been only by a word of mouth (254-5/).

### Sūlapani

#### Yājñavalkya Verse 257

When an article has been sold to one and it is again sold to another as faultless although faulty then double the amount of the price shall be the penalty (257).

Rescission of a rule has (thus) been described, the characteristics of a rescission of a purchase have already been discussed before. Now the Author mentions a rule which is common to both of these.

#### Yājñavalkya Verse 258

No rescission of a sale of commodities shall be made by a trader unless he was ignorant of the excessive or diminished rates (therefor). He who does (rescind) shall be liable to pay a fine of a sixth part.

Mitakṣharā — *Nanūsayah kāryah no rescission (of a purchase) shall be made by a purchaser, who does not perceive any excess in the price charged, or the commodity upon a valuation of the same subsequent to the time of the purchase but at the rates prevailing at the time*

1 Ch VIII 6 10

2 It seems Mr. Colebrooke reads this verse in Yājñavalkya differently. His reading would appear to be *यज्ञवल्क्यः* since he translates as 'who knows the profit and loss &c.' See Colebrooke Dig I p 68.





In the case of things which do not suffer by enjoyment, and which have a fixed value, the fine for one making a rescission after the time for rescission is over, shall be imposed in accordance with the rule laid down by Manu<sup>1</sup> "But after (the lapse of) ten days he may neither give it nor cause it to be given (back), both he who takes it (back), as well as he who gives it (back), shall be fined by the king six hundred *panas*."

Thus ends the chapter called *Non delivery after sale*

#### Viramitrodaya

Now of the rescission of purchase which has been stated before generally, the Author mentions the special rule in point in regard to non delivery after sale

#### Yājñavalkya Verse 253

A rescission should not be made by a trader when he has purchased without knowing the depreciation of the value of the commodity. Having sold without knowing the appreciation in the price of the commodity, a rescission should not be made. Thus one who makes a rescission even without knowing, makes himself amenable for penalty for a sixth of the price of the commodity. By the use of the word *cha*, also, is meant that a rescission may be made upon a discovery of the fall or rise. Nor is there the text 'having sold etc.' included

Brhaspati<sup>2</sup>. "What has been sold by one intoxicated, or insane, or at a very low price, or under the impulse of fear,<sup>3</sup> or by one not his own master, shall be relinquished by him (the purchaser), or (the seller) may recover it back. The connection is that the purchaser shall give it up, and the seller shall take it back."

Thus ends in the commentary on Yājñavalkya the Chapter on  
*Non delivery after sale*

#### Sūlpaul

#### Yājñavalkya Verse 253

When merchants make purchases without ascertaining the appreciation or depreciation of the articles of sale a rescission should not be made. When one makes a rescission, he shall be liable to pay as a penalty one-sixth part of the price of the articles sold. Narada<sup>4</sup> states a special rule (see above Mitāksharā p 1302 l 7-12 ) (253)

1 Ch VIII 223

2 XVIII 3

3 The Benares edition reads अदोष ए, while Dr. Jolly in his Extracts of Brhaspati has it appears, the reading अदोष which is better and therefore followed and is accepted in the translation

4 Ch IX 2-3

## CHAPTER XXII

## Trading by Partnership

Now is being described the Title of Law called 'Trading in Partnership'

## Yājñavalkya, Verse 259

Among traders carrying on a business in partnership with a view to gain, the profit and loss shall be according to the (contribution of each to the) stock, or according as was determined by special agreement.

Mitāksharâ — Samavāyah, *partnership*, is an agreement<sup>1</sup> by which several persons agree to do any business together. Under such an agreement, for such work as is done by each of the people, such as traders, actors, dancers and like others working with a view to gain, the share of *profit or loss* *lābhālābbau*, <sup>1</sup> *of an increase or decrease*, will be determined by regard to the contribution of each <sup>2</sup> according to the quantity of stock for the use of the trade supplied by each. Or, the shares (in the profit and loss) shall be determined as fixed upon by any agreement or compact (between the parties), such as, having regard to the chief qualities and capacity in each, such a one should be entitled to two shares, such another one share, and the like

## Vīramitrodaya

The Author now begins the title of law known as "Trading by Partnership"

## Yājñavalkya Verse 259

Of the traders combining together for profit and engaging in a transaction, the profit or loss shall be (determined) according to (the contribution of) the original amount of money. Or if the profit and loss have been the subject of a special agreement, then these shall be according to such arrangement in that manner in the case of traders, actors etc (259)

## Śūlapāni

## Yājñavalkya, Verse 259

Of tradesmen engaging in trade by a combination with a view to profit the profit or loss should be understood to be according to the share of the capital of each, or the same should be determined as may have been previously agreed to (259)

1 An agreement thus 'We will all do this business together'

## Yājñavalkya, Verse 261

'The king shall take as a tax a twentieth share of the price fixed (by him) A Commodity which has been specially reserved as also that which is worthy of a king shall, if sold, belong to the king.

- 5 Mittāksharâ — For fixing the price of a commodity *e g* such an article of merchandise shall have such a price *i e* by reason of the same being determined upon by the king he (*i e* the king) shall receive a twentieth part of the price as a tax. That, moreover, which *vysuddham*, had been specially reserved *i e* prohibited by the king from  
10 being sold anywhere else, also that which is worthy of the king, such as jewels, rubies and the like, even when forbidden, if the same be sold out of greed for profit without informing the king *tadrâjagâm* *the same shall belong to the king, i e* all that merchandise the king shall appropriate without (regard to) the payment of the price

15

## Vîramitrodaya

On the occasion of the treatment of the right to a share, the Author mentions the king's right to a share

## Yājñavalkya Verse 261

- 20 By reason of his fixing the price the king shall take a twentieth part, the meaning is that the king shall take from the price. Some, however, hold that the king should not take a share, but the commodity itself or its price in entirety should be taken by the king *Vysuddham*, 'specially reserved, *i e* 'this must not be sold here, a commodity which has been thus prohibited by the king but has been also there  
25 *Rajayogyam cha*, 'also that which is worthy of a king, such as a rouge elephant or the like although not prohibited have been sold elsewhere without the permission of the king, *tad râjagâm*, 'that goes to the king, may be appropriated by the king *i e* even without his paying the price (261)

30

## Sâjapâni

## Yājñavalkya Verse 261

- On account of the determination of the price the king may take a twentieth part of the price as his tax. Such article, moreover as may have been prohibited by the king as for sale (in the market) on account of  
35 its extraordinary character as also such as is fit for the king as *e g* a white chowry such article even though sold as of the king (261)

## Yājñavalkya, Verse 262

He who falsely declares the quantity, who avoids a tolling office shall be compelled to pay eight times, as also he who purchases or sells fraudulently.

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Mitāksharā — That trader, again, who conceals the (real) quantity of a commodity with the object of defrauding the customs (officers), or skulks away from the tolling offices, as also he who either purchases or sells an article which is the subject of a dispute (as to) 'whether it belongs to this or it is of that man', all these shall be fined eight times the amount of the value of the commodity

## Viramitrodaya

The Author mentions the penalty for one who does not pay to the king and is adverse

## Yājñavalkya, Verse 262

One who with a view to evade the payment of the tax declares falsely the measure or quantity of the merchandise such as cloth, pearls, etc., or avoiding the excise officer saying 'this has been deposited by me here, it is neither sold nor purchased,' and thus causing deception, a trader who thus effects a sale or purchases shall be compelled to pay eight times the price of the commodity as penalty. By the use of the word *cha* twice, the Author indicates severally as the cause for the infliction of a fine upon those who deceitfully carry on sales or purchase indicated by the word ending in the present participle termination (262)

## Sūlapāni

## Yājñavalkya, Verse 262

He who through covetousness declares falsely at the excise office the quantity of an article for a sale, and one who without paying the toll sneaks off from the excise office, he also who with a view to defraud the king at the time of the sale ultimately fraudulently makes purchases or sales such a one should be compelled to pay as penalty an eightfold of the money defrauded. When, moreover, without even going to the toll office, he goes elsewhere by another road, then the entire property should be confiscated. As says Viṣṇu: 'One who evades the toll office, shall incur the forfeiture of the entirety' (262)



Yâjñavalkya. Verse 263

A marine officer levying a land cess, shall be compelled to pay ten pana The same shall be (the fine) for not inviting the Brâhmanas and Prathivas

- 5 **Mitāksharā** —And again, customs dues are two fold i.e. one levied on land, and another levied on water. Of these, the tax levied on land has been mentioned in the text<sup>1</sup> "The king shall take as a tax the twentieth 'share of the price fixed" The tax levied on water, however, has been mentioned in the text of Manu<sup>2</sup> "At a ferry, a conveyance shall be  
10 "made to pay one *pana*, a man half a *pana*, an animal and "also a woman a quarter and an unloaded man one half of a "quarter (404) Conveyances fully laden with vessels shall be made "to pay toll at a ferry according to the substance<sup>3</sup>, empty vessels, as "also men without a luggage (shall pay) a trifle (405) But a  
15 "woman who has been pregnant for two months or more an ascetic, "a monk, is also a Brahmana,<sup>4</sup> students of the Vedas, shall not be "made to pay toll at a ferry (407)"

Here is another special rule<sup>5</sup> applicable even to both kinds of tolls

- 20 "A toll is never levied on a man less than a *kar āṣṭama*, it is never levied on a livelihood gained by art, nor on an infant, nor on a messenger, nor on what has been received as alms nor on the remains of stolen property, nor on a *S'ratriya*, nor on a hermit nor on a sacrifice "

That by which a thing is floated is a ferry *e g* a boat and the  
like One who is commissioned to recover the toll levied on these is

- 25 *Tarikah a Marine Officer*. Such a one, when he recovers a toll levied on these lands shall be fined ten *panas*. *Vesa*, *Tevna* and *Prakrevi* are indicative of one's own house and the (neighbours in its) front or rear. People living in these parts are *Prātvesyas* or people living in the neighbourhood. *Bṛāhmanas* and *Prātvesyas* (joined together) make up  
30 (the compound expression) 'Bṛāhmanas and Prātvesyas'. The non-invitation of these on exequarel occasions or the like, when they are accomplished by the study of the Vedas and by their (pure) lives and when he has competence (to invite them)—thus itself must be understood to be punishable with ten *panas*.

1 Yajñavalkya II 261 p 1306 above      2 Ch VIII, 404 40a and 40c

3 according to the quantity of the goods as well as their value

४ आहणादिभिर्नो—अहसादिभिः आहणमहणमवशक्यम् । —सञ्जतिपि

6 See Vasubhatta Ch. XIX 37. Balambhatta assigns it to Manu.

**Vīramitradaya**

Like a trader not paying the tax, a penalty is payable by the officer of the king also when he recovers a tax which is not proper. Intending to lay down this rule the Author states a penalty also for transgressions of a like character.

5

**Yājñavalkya Verse 263**

*Tantah*, 'A naval officer, i.e. one appointed for the water tax, a twentieth part of the price fixed as stated before' when he recovers a tax on land, such a one shall be compelled to pay the penalty of ten *panas*.

10

*Prathusa* is a house in the close vicinity of one's own house. One who does not invite Brahmanas residing there even when there is occasion for an invitation to others shall be compelled to pay also a penalty of ten *panas*. By the use of the word *cho*<sup>2</sup> it is added "if he accepts his invitation." Manu<sup>3</sup> states the water tax "At a ferry, a conveyance shall be made to pay one *pana*, a man half a *pana*, an animal and a woman, a quarter, and half of a quarter, an unloaded man. Conveyances fully laden with vessels shall be made to pay a toll at a ferry according to the substance. Empty vessels as also men without a luggage a trifle." A man i.e. a man carrying a load.

15

20

Here there is a special rule even with regard to the two kinds of tolls. A toll is never levied for a sum less than a *Āśvāpāna*. It is never leviable on a livelihood gained by art, nor on an infant, nor on a messenger, nor on what has been received as alms, nor on the remains of stolen property, nor on a *Srotiṣa* nor on a hermit, nor on a sacrifice (263).

25

**Sulapana**

**Yājñavalkya, Verse 263**

One authorized as a toll officer for the water cess recovering on land the toll which is to be recovered on water should be compelled to pay ten *panas* and one not inviting neighbouring Brahmanas on an occasion of feast should similarly be fined ten *panas* (263).

30

1 See verse 261 p. 136f. above

2 अयमिषण्यस्यैवमिषण्यम् and appears to be good. A reading अयिषण्यस्यैवमिषण्यम् is the reading in the Benares edition. This is either a mistake in the reading or that appears to be the illiberate opinion of Mitramisra. This is suggested by the next clause in which he says अयमिषण्यस्यैवमिषण्यम्. This view of Mitramisra appears to be in direct opposition to the text of Yājñavalkya which says अयिषण्यम् for a travelling. While the reading is correct, undoubtedly the conveyance is water viz. inviting when there is no occasion for it. If the reading is correct it is not proper.

3 That is no *cho* in the original

The Author mentions a rule regarding the property of a trader dying abroad

Yājñavalkya, Verse 264

If one goes abroad and dies (there), his wealth shall be taken by his *dīyūdas bāndhavas* of his *jāti*, or who may have come; and failing these, by the king.

Mitākṣharā—When one of those who trade in partnership goes abroad and dies, then his share, his *dāyādāḥ*, i.e. his sons and other lineal descendants, *bāndhavāḥ* i.e. (relations) *ex parte materna*, such as the maternal uncle and others, his *jātāyah* i.e. his *Sampradāya* relations other than his lineal descendants; or *who may have come*, *āgātāḥ* i.e. such of the members of the joint trading partnership as may have returned from the country abroad; (these) shall take. *Failing these*, *śaiv viṣṇu*, i.e. in the absence of these viz. the *dīyūdas* and others, the king shall take.

By the use of the word *or*, the Author indicates the uncertain<sup>1</sup> nature of the right of the *dīyūdas* and others to succeed. The rule as to the order of succession, however, must be understood here to be the same as that propounded in the text<sup>2</sup>. "The wife, the daughter &c."<sup>3</sup>

Among merchants also, he who is competent to offer the funeral oblation and pay the debts and do similar acts shall take. If there is no distinction as to the capacity (for doing the above), all the merchants trading together in union shall take after dividing. In the absence of these also, after waiting for the appearance of the *dīyūdas* and others for ten years, and on their non-appearance, the king may take it himself.

All this has been made clear by Nārada<sup>4</sup>. "Should one of the partners die, his *dīyūdas* shall get his share (7). In the absence of the *dīyūdas*, any one (of the partners), if all are equally competent. On failure of these, he shall keep it well guarded for ten years (17). When such property without an owner, and unclaimed by a *dīyūda* has been preserved for ten years, the king may then take it over to himself. Thus, the law will not be violated."

1 The whole of this passage has been translated and referred to by Mehta West and Habbler in their *Hindu Law* at p. 153 seq. and in *Sanskrit* at p. 218-219.

2 See *ex parte materna*—optional contingent.

3 Yājñavalkya II. 175 & 176 See also p. 177.

4 The text is not that but will be as in the original paper of the author. See the text of the original paper of the author. See the text of the original paper of the author.

**Viramitrodaya**

If among men trading by partnership one dies, then by whom should his share be taken? So the Author says

**Yājñavalkya Verse 264**

While one trading as a partner dies his share his sons and the rest, his mother's sister's sons and the like of his sapindas who have gone there shall take the property according to the right. By the word *ud*, 'or', the alternative choice as well as the relative priority are included. Otherwise the whole goes to the king (264)

5

**Sulapāni**

**Yājñavalkya Verse 264**

Among persons trading by partnership if one dies in another country, his property, his sons etc. in their absence, uncles etc. in their absence kindred, and in their absence—except in the case of the property of a Brāhmana—the king, shall take (264)

10

15

**Yājñavalkya, Verse 265 (1)**

A man of crooked ways let the other partners expel without profit, one unable (himself) may have it done by another

PAGE 144\*

Mitaksharā:—Moreover, *jūmsh*, a man of crooked ways, i.e. a cheat, such a one, the other partners *anagatalabham tyajeyuh* should deprive of all profit and expel, i.e. deprive. He, moreover among partners carrying on a joint trading business who *asaktah* is unable to supervise the vessels of merchandise and do other like acts such a one *kārayet*, may cause his own duty, such as that of conveying the goods of trade, or supervise the accounts of the receipts and debits relating thereto and like other acts *anyena, iy another*

20

25

The Author extends the law (relating to partnership) among traders as stated before, to priests officiating at a sacrifice and the like others

**Yājñavalkya, Verse 265 (2)**

30

By this has (also) been stated the law regarding officiating priests at sacrifices, husbandmen and artisans

Mitāksharā:—Anena, by this i.e. by the statement of the rule<sup>1</sup> regarding traders i.e. "the profit and loss shall be according to the stock &c", *Itwīām regarding officiating priests at sacrifices* such as the *Hotar* and others, the husbandmen, as also the actors, dancers and others maintaining themselves on arts, *vidhāh*, the law, i.e. the rule of conduct *ākhyātāh* has been stated

Even there, a special rule has been stated by Manu<sup>2</sup> regarding the distribution of the property of priests "Among all (the priests) officiating at a sacrifice, those (first four who are) entitled to a half ( *Ardhīnāh* ) are the first (to receive), the next (four) one half of that, the set entitled to a third share, one third, and those entitled to a fourth a quarter" The meaning of this passage is this under the text "in a *Jyotishtoma*<sup>3</sup> sacrifice, they shall endow it with a hundred" a hundred cows have been enjoined as an endowment for

1 Yājñavalkya II 209 see p 1304 above

2 Ob VIII 219

3 The principal priests officiating at a sacrifice who are called *Itwīk* are sixteen in number distributed under four classes, each class having four members

(1) The first class includes those who are entitled to a half of the entire *Dakṣiṇā*, and are known as the *Ardhīnāh*

(2) The members of the second class are entitled to a half of the first and hence are known as *Tadardhīnāh*

(3) The third class are entitled to a third of the first class and are called *Tritīyānāh*

(4) The fourth class are entitled to a quarter of the first class, and are known as *Pādīnāh*

Although one hundred cows are considered as a proper *Dakṣiṇā* for a sacrifice, still to make the whole distribution commensurate, 96 is the number chosen (see Amara I 3 16) so that the first class take 48 cows the second class 24, the third 16, and the fourth, 12, thus making up the total of 100 cows This is one way of distribution and has been expounded in the text of the Mitāksharā Another way of distribution is suggested by some e.g. by Harada, according to which the whole is divided into 24 shares and the several classes shall receive 12, 6 4 and 3 shares each respectively, a mode which, it will be seen only defects in the method of working out the figures but yields the same result

4 *Jyotishtoma* is a *Soma* sacrifice and is considered as the type of a whole class of sacrificial ceremonies At this sacrifice sixteen officiating priests are required by law, and these are grouped into four classes each class having again four priests in it as described in the note above, and in the text of the Mitāksharā.

the sacrifice as in levity of respect to the *ṛthi*s or priests officiating at the sacrifice. The *ṛthi*s moreover, are sixteen in number i.e. the *Hiti* and others. There, in answer to the question what person is entitled to what share? the rule in the present text is laid down. Of all the sixteen priests officiating at a sacrifice those who are the chief i.e. the *Hoti*, *Adhvaryu*, *Brahmā* and *Udgātā* these are entitled to a half of the hundred cows i.e. equal to forty eight cows, to make the division complete into entire numbers<sup>1</sup>. Those next in order i.e. the *Maitravaruna*, *Pratyakṣa* the *Brahman* which may, and *Prastotā* are entitled to a half of that i.e. half of the principal share i.e. twenty four (cows). Those, moreover, who are entitled to a third i.e. the *Achikṣit*, *Iti*, *Neht*, *Agnidhra* and *Prañartā* these being entitled to a third i.e. a third of the principal share shall take a third i.e. sixteen cows. Those indeed, who are entitled to a quarter i.e. the *Gṛhasth*, *Uvash*, *Iti* and *Subrahmanya*, these shall take what amounts to a fourth part of the principal share i.e. twelve cows.

Indeed how can this rule as to shares prevail? There is here neither a compact (to that effect), nor a combination of capital, nor any express text, under which there may be a rule as to the shares. And under the maxim of law i.e. 'In the absence of a special rule the shares shall be equal' it is proper that all shall be entitled to equal shares or proportionately to their labour.

Here the answer is. In the *Dvadasaha*<sup>2</sup> sacrifice which is only a variant of the principal sacrifice called *Jyotishtoma*, it is not proper to suppose that (the recognition of) the *Ardhinas*, *Trayinas* and *Purinas* is a mere repetition of something

1 सम स्वाध्यायवर्गः Jaimini X. III. 53. Thirteen Adhvaryu & Ben note above. The relative proportion of the shares of the several classes mentioned in the text will not be maintained if 100 be taken as the total number in relation to which the half &c. is to be determined. Moreover according to the lexicon *śāṅkha* (I. 3. 16) the word *ardha* half when in the masculine gender is used generally to indicate 'a portion', and not a precise half. Thus 48 is chosen as the figure for the first class and then the numbers 24, 16 and 12 respectively are deduced by the method described above.

2 *Dvadasaha*—is an offshoot of the principal sacrifice called *Jyotishtoma* which is called the *Prañartā* i.e. the base sacrifice as opposed to a *Pūrta* which means a variant of the base with slight variations as to details.

already established, if in the principal sacrifice, the *Manthāraruṇa* and the other priests were not entitled to a half, a third, and the fourth shares respectively. Therefore the rule as to (particular) shares as mentioned before (necessarily) follows from the very force of the expressions *Ardhas* &c. used in the Veda. Thus there is no fault.

Thus ends the Chapter on the Law of Partnership

### Vīramittrodaya

Who indeed will not get its share? So the Author says

Yājñavalkya, Verse 265 (1)

10 *Jihmah*, 'crooked', i.e. one who by his tricks is instrumental in the non accomplishment of the business of the partnership such a one they (i.e. the partners) should expel i.e. drive out, without (giving any) profit. The meaning is that if he is unable alone (to do it) then he should have his part performed by another, but should not practise deceit [265 (1)]

1 *Samāhṛtyā*—'name, expression,' one of the six means of proof of the *Vaiyogya-vidhā*, the other five being *Brūta*, *Linga*, *Vākyā*, *Prakaraṇa* and *Siddhānta* (See General Note on the Hindu Law Texts p. IV)

The meaning is thus. The objector maintains in the statement of this objection, that the persons to whom the terms *Ṛdhas*, *Trāyas* &c. are applied, are not necessarily entitled to a half, a third, or a fourth respectively, in every other sacrifice also, simply because of the fact that they get those shares in the principal sacrifice of *Jyotiṣṭoma*. This would be justifiable if it were a mere repetition of what had already been established. But no such rule has been established after a proper demonstration, and therefore there is no room for its adoption as a mere repetition (*Anuvāda*). The answer, however, is that it is not as a repetition (*Anuvāda*) of anything established (*Siddhānta*) that this rule as to shares is being propounded, but that the very force of the expressions *Ṛdhas*, &c. used in the Veda carries with it the meaning that the several priests thus indicated are entitled to a half, a third, and a fourth share respectively.

N.B. An *Anuvāda* (अनुवाद) is an explanatory repetition of, or reference to, what is already mentioned.

It is also called *विषय* the subject of the assertion as opposed to *विषय*, the fact or the quality asserted of the subject: i.e. the predicate, and is to be proved or established. The *विषय* is already known or assumed as established, while the *विषय* is that to establish the connection of which with the *विषय* is the object of the proposition. Thus 'Devadatta is wise,' Here Devadatta is the *विषय* or the subject and being already known or assumed as established is from another point of view also an *विषय*, but 'wisdom' is that which is to be established with reference to Devadatta and is therefore the *विषय*. This may be further developed to clarify the above thus 'the wise Devadatta is good.' Here Devadatta and his wisdom are known, and his goodness is to be established.

## Vīramitrodaya

The rule as to profit and loss stated before<sup>1</sup> as the law among the tradesmen, the Author extends in the case of sacrificial priests and others

Yājñavalkya, Verse 265 (2)

5

*Anena*, 'by this', i.e. by the statement of the rule as stated before, the law has been stated for the sacrificial priests, such as the *Hota* etc., for husbandmen i.e. those who carry on agriculture, for artisans, i.e. those who engage in works of art, dancing etc

Regarding the division of property among the sacrificial priests <sup>10</sup> Manu<sup>2</sup> states a special rule "Among all (the priests officiating at a sacrifice,) those entitled to a half are the first (to receive), the next (four) one half of that, the set entitled to a third share, one third and those entitled to a fourth, a quarter

It is stated in the Vedic text that in a *Jyotishtoma* sacrifice they <sup>15</sup> shall endow it with a hundred, by this a hundred cows has been enjoined There, among the sixteen sacrificial priests, those who are the first four, i.e. the *Hota*, *Adhvaryu*, *Brahmā* and *Udgata* are entitled in the capacity of their first right to a share to a half by less i.e. for these four, forty-eight cows, for the next four i.e. *Maitravarnas*, *Pratipras-  
thata*, *Brahmandachehamsi*, and *Prastota* will have half of it : i.e. will be <sup>20</sup> entitled to twenty-four as their share, the third i.e. *Achikhvadhā*, *Nakṣatā*, *Agnidhra* and *Pratiharā*, these four, are sharers for a third : i.e. the third part of forty-eight thus for them sixteen cows The fourth, moreover, i.e. *Gravastud*, *Unnata*, *Potā* and *Subrahmanyah*, they are the sharers of <sup>25</sup> the fourth of the first part, thus to them twelve cows are to be given Moreover, in whichever performance whatever quantity has been stated as the *dakṣhina* for that occasion which he should take these or all these all of them should take together Under the text "He gives two golden lights to the *Adhvaryu* such *dakṣhinas* as for example, for the sacred <sup>30</sup> bath etc as have been stated in particular connections should be taken by him only, and here there is no division This is the meaning. Sankha and Likhita "Now after the *Ritvik* has been installed, after him another should be installed the *dakṣhina* shall be for him only who has been installed before One who is installed after, may <sup>35</sup> get a trifle, if he stays on for the period He should bide the time waiting for the occasion He should not sacrifice for another He



- "should finish the sacrifice, having gone away, if one returns, he may  
 "get a trifle, if, however, the chief priest goes out, that priest should  
 "be fined a hundred coins." *Manu*<sup>1</sup> "After the *dakṣiṇās* have been  
 "paid, if he abandons his work he shall obtain his full share and have it  
 5 "performed by another i.e. by the son or the like. *Brhaspati*". "What-  
 "ever has been contributed jointly together, that should be demanded in  
 "the same manner Here if some one does not make a demand such a  
 "one loses the profit Similarly<sup>2</sup> "When by the deficiency of one  
 "partner as to cattle or seeds a loss happens in (the produce of) the field,  
 10 "it must be made good by him" The meaning is, that on account of  
 "whose contribution there is loss to the field by him should it be paid.  
 "Also when goldsmiths or other artists operate jointly, upon (a work  
 "of) art, they shall share the profits in due proportion corresponding  
 "to the nature of their work. Profits i.e. wages *Kātyāyana*<sup>3</sup>: "If  
 15 "artisans i.e. apprentices, more advanced students, and teachers (are  
 "employed together in one undertaking) they shall receive one after  
 "another in order one, two, three, and four shares *Brhaspati*<sup>4</sup> "The  
 "same rule has been declared for dancers by those conversant in law  
 "The expert in *śālā* (beating time) gets a half more, while the singers  
 20 "take equal shares." Half more i.e. together with the half.

### Sūlapāṇi

#### Yājñavalkya, Verse 265

- One who is crooked i.e. deceitful, the partners should expel by cutting  
 off his share One who is unable to look after a vessel etc should have  
 25 the work done by another

The law relating to the sacrificial priests husbandmen, and artisans  
 is the same as stated (here) for tradesmen (265)

1 Ch VIII 208

3 Ch XIV 21

5 Ch V 112

2 Ch XIV 19

4 Ch XIV 28

6 Ch XXIV 170

## CHAPTER XXIII

## On Theft

Now commences the chapter on Theft Its definition has been  
 Definition of Theft stated by Manu<sup>1</sup> 'An offence, which is committed  
 "in the presence, and with violence, would be called 5  
 "Sâhasa (i. e. robbery), if (it is committed) in the absence, it would be  
 "(called) Steya (theft), as also where anything is denied after it has  
 "been committed."<sup>2</sup> In the presence, i. e. in the presence of the owner  
 guarding the property, or the king, or the chief officer, or like,  
 other. With violence, i. e. with a show of criminal force, when a depri 10  
 vation of another's property or any such similar act is committed, it  
 becomes a Sâhasa or robbery. Theft, moreover, is two-fold 'In  
 'the absence' i. e. where, in the absence of the owner of the property,  
 or like another, another's property is taken away by deception it is  
 called theft Where, moreover, even when the act is committed in the 15  
 presence, (the actor) denies (it) through fear (saying) 'I did not do this',  
 even that is theft It has also been said by Nârada<sup>3</sup>  
 PAGE 143\* "Taking away, by any of these several means what  
 "soever, by deception, property of persons asleep,  
 "or disordered in intellect, or intoxicated, sages declare to be theft" 20

There, as the catching of a thief is necessary for punishing him,  
 and as for catching him it is necessary to detect him, the Author  
 presently mentions the means of detecting him

Yājñavalkya, Verse 265

A thief is arrested by the police officer, by means of the lost article 25  
 or by the foot-mark, a man once convicted of an offence as also one who  
 lives in an unknown place

Mātāksharâ—One, who is declared by the people "This is a thief"  
 chaurô—such a one should be arrested by the police officers, grâhakah  
 i. e. the state officers, such as the watchmen of the place and the like 30  
 others, or he may be apprehended by means of the lopra lost article,  
 i. e. the vessel &c which had been taken away, as (it is) an index of

1 Ch VIII 332

2 <sup>११</sup> is another reading which is seen in Manu and elsewhere In that  
 case it would mean 'after it has been taken away'

3 Ch XI 17V.

- theft, or by tracing the foot marks, immediately from the day of the loss. He, moreover, *pūṛva karmāparādhi* who had once been convicted of an offence, *i.e.* who had once been found out to have committed a theft, as also one *anuddhawāsakaḥ* who lives in an unknown place, *i.e.* one whose place of residence is unknown: *e.* not well known, such a one also may be arrested.

### 'Sūtapāni

#### Yājñavalkya, Verse 266

- By the officers of the police one who has been pointed out as a thief should be apprehended for theft by a mark or sign of theft, by foot-mark: *i.e.* commencing with the place of loss and in pursuit of the foot-steps of the thieves etc., or previous acts of robbery, and one who has not established his place of residence (266)

#### Yājñavalkya, Verses 267-268

- Others also may be apprehended on suspicion, such as those who conceal their caste name and the like, those who are addicted to gambling, women, and drinking, as also those whose mouth becomes parched up and voice falters (267),

- Also those who make inquiries about another's wealth and houses, whose movements are mysterious who having no income spend much and those who sell lost articles (268)

Mitākshara:—Moreover, not only that those mentioned before should alone be arrested, but *anyepi*, others also, by means of marks to be presently mentioned *sakayā grāhyāḥ*, may be apprehended on suspicion

- 'On account of the concealment of the caste', *e.g.* in the form 'I am not a Śūdra', on account of the concealment of the name *e.g.* one saying 'I am not Lapittila'. And by the use of the term *Ādi—* 'and the like,' those also should be apprehended, who are exposed by the concealment of their own country, village, family and the like.

- Those who are excessively addicted to gambling, public women, drinking and other similar vices, as also one who when accosted by the police officers 'whence have you come?' *sushkamukhaḥ*, has his mouth parched up, or *bhinnaśwaraḥ*, his voice falters, then he also may be apprehended. By the use of the plural number are included also those whose forehead<sup>1</sup> perspires, and the like others

<sup>1</sup> See Yājñ. li 13-15 p. 691 above

Likewise those who without any cause make inquiries, 'how much wealth has he?', or 'where is his house?', or those who move about concealing their identity by putting on a disguise, those also who having no income spend much, as also those who are vendors of lost articles, i.e. of the old clothes, broken pots, and similar other articles the owners whereof are not known, all these may be apprehended on suspicion as thieves 3

Having thus apprehended people having various marks of suspicion about their having committed a theft, a decision as to whether these are thieves or good people should be declared after a minute inquiry, and not by a mere discovery of the signs (of a thief) as it is possible that the marks of (having) the lost article and others may be found even on one who is not a thief, as says Nārada<sup>1</sup>. An article should "be determined upon as a lost one by special investigation: i.e. when "it had dropped down from another's hand, and was discovered on "the ground, without any special desire for it, whether it was "deposited there by a thief. Similarly, the untruthful appear as the "truthful, likewise, the truthful look as if they were untruthful, thus "various aspects (of things) are seen (in this world), therefore an "investigation has been prescribed" 15 20

### Sūtapāni

#### Yājñavalkya Verse 267

Others also besides those stated should be apprehended on suspicion as thieves by the denial of the name etc. Denial of name such as 'I am not such a one' denial of caste such as 'I am not a Brāhmaṇa'. By the use of the word *Adi* and the like, are included the country the family the place etc. Similarly those addicted to gambling. In these manner when asked 'who are you?', 'Whence are you coming?' those whose mouths become parched and the voice breaks these also should be apprehended (267) 25 30

#### Yājñavalkya Verse 268

Those who make enquiries about the property of others as also about the houses those who move about secretly those who having no income incur expenditure those who dispose of broken earrings and the like (these) should be apprehended on suspicion (268) 35

1 Not found in the published edition of Nārada by Dr. Jolly

The person thus apprehended on a suspicion of theft must prove himself innocent; so the Author says

**Yājñavalkya, Verse 269**

5 If one who has been apprehended on suspicion do not clear himself from the (charge of) theft the king shall compel him to make good the lost article, and punish him with the penalty for a thief

Mitaksharā—If one apprehended on suspicion as a thief does not clear himself from that charge, then he shall be compelled to pay the amount and be liable to corporal punishment as will be presently  
10 mentioned. Therefore, he should be cleared either by human<sup>1</sup> proof; or in its absence, by an ordeal

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Indeed, how can the statement *e g* "I am no thief" be possible as evidence in an answer<sup>2</sup> of denial, because it is negative in its nature. The answer is the admissibility of an affirmative as well as a negative  
15 proof in an ordeal has been demonstrated in the text<sup>3</sup> 'Or by consent any one (of the two) may perform' Moreover<sup>4</sup>, although human proof is not possible in an answer of a simple denial, still when it is joined to a special plea, which is of an affirmative character, and then becomes 'a combination of a denial and an  
20 exception', it makes it possible even for the negative evidence to be adduced *e g* if the accused prove by evidence his statement *e g* "At the time of the loss or theft I was in another place", the absence of theft (by him) becomes necessarily proved, and thus indeed there  
25 follows an exoneration

1 See p 713 II 21-24

2 See Text p 7 Translation p 661, II 16-18 above

3 Of Yājñavalkya II 96 (1) See p 913 above

4 See pages 664-666 above. The meaning is that a statement in a defence which is merely of a negative character cannot be established by proof positive—*e g* when a man says 'I have not committed this theft'—unless he can establish some positive fact which will collaterally support his negative answer, *e g*, by his setting up an alibi when he can affirmatively prove that he was in another place at the time when the theft was committed. And for this he will have to file a mixed plea 'combined of a denial and a special plea.'

### Vīramitrodaya

The Author treats of the law of theft by a separate chapter. There, first the Author mentions the means of detecting a thief

*Yājñavalkya, Verses 266-69*

*Grāhakaśh*, 'by the police officers, & c. by the servants of the king 5  
authorized to arrest, or by another, such as the owner of the property  
etc., *loptrena*, 'by (means of) the lost article, & c. the vessel etc  
taken away, as the sign of theft; or by marks of theft, such as foot-  
prints etc at the place of theft, a thief is arrested & c. is determined as  
having committed a theft.

He also who by his past action, such as theft, had a previous 10  
conviction, he who has no fixed place of residence, such a one also is  
apprehended & c. is suspected of having committed a theft (266)

Not only these two alone may be apprehended on suspicion, but 15  
those addicted to gambling etc, when asked "who are you?" exhibit  
'a parched mouth and a hoarse voice, or those who ask questions about  
the property or houses of others, those moving about by disguising them-  
selves, those who without any income spend much, as also those who  
sell old clothes, vessels etc of unknown owners should be subjected to  
the suspicion of theft (267-68)

When after one is subjected to the suspicion of theft, he does not 20  
acquit himself as innocent of theft by witnesses, ordeals etc then he  
should be compelled to pay the lost property to the owner, and the king  
should punish him with the first amercement which is the penalty for a  
thief, as will be stated hereafter

By the use of the word *atha*, 'thereafter', is meant 'after the lost 25  
'property is found, the Author suggests that it is only in its absence  
that the foot marks etc should be traced. By the use of the word *cha*,  
'and', his fondness for theft, and by the use of the word *tathā*, 'also', is  
included the determination of the family etc, the word *ca*, 'also', 30  
connected with the first half is meant as a means of determination by  
the exclusion of any other alternative, by the use of the word *api*  
'even, as also the use several times of the word 'cha' are included those  
who offer food, shelter etc to the thief and several others stated in  
several other *Smṛitis* (266-69)

### Śūlapāni

*Yājñavalkya, Verse 269*

When one who has been apprehended on suspicion as a thief, if 40  
he does not exonerate himself by visible or invisible means  
or does not acquit himself, then he should be compelled to pay the stolen  
property, and should be sentenced with the punishment for a thief (269)

The Author mentions the penalty for a thief

**Yājñavalkya Verse 270 (1)**

Having compelled the thief to restore the properly stolen (the king) should punish him by the several (modes of) corporal punishments

- 0 Mātākṣarā —He, however who either by means of the tests stated before, or by means other than those has been proved to have committed a theft, should be compelled to make over to the owner the property *apahṛtam stolen* either the thing itself or by determining its equivalent (in money) *varidhanwadhaughātayet* and (the king) *et muld*  
10 *punish him by the several (modes of) corporal punishments*

- This, however has a reference to articles of a superior quality, in the case of which the punishment of the highest amercement is incurred, and does not hold in the case of the theft of articles of small or middling value such as flowers clothes &c. Since on account  
10 of the text of Narada<sup>1</sup> viz 'The series of punishments, which has been "ordained by the wise for the three kinds of Śāstras is equally applicable to theft, according as it concerns one of the three species of articles in their order' The corporal punishment, which is ordained for a Śāstra of the highest order, has been assigned in the case of articles  
20 of superior value. What moreover has been observed by Vṛddha Manu in the text 'The property of these is tainted with sin since it 'has been acquired by illegal means, therefore, the king should inflict 'corporal punishments on them and should not merely inflict a pecu  
'niary fine that too has a reference to offences of a serious nature

- 25 The Author mentions an exception in the case of certain thieves

**Yājñavalkya, Verse 270 (2)**

He should brand a Brahmana and banish him from his kingdom

- Mātākṣarā —Moreover, a Brahmana (who has been found as a) thief the king should not chastise by a corporal punishment, but after  
30 branding him on the forehead, he should banish him from his kingdom. The branding too should be with the mark of a dog's foot. For Manu<sup>2</sup> says 'For violating the bed of the preceptor (the mark of) a female part shall be impressed for drinking spirituous liquor the sign of a  
'tavern in the case of a theft, moreover the mark of a dog's foot  
35 'should be made, for killing a Brahmana a headless corpse

This proceeding, moreover, shall be observed in the case of one who does not perform the (necessary) expiation after the punishment (was declared) as says Manu: "But (men of) all castes who perform the penances as prescribed, must not be branded by the king on the forehead, but shall be made to pay the highest amercement." 5

## Viramitrodaya

Not only should one be arrested on suspicion, but also one about whom the offence of theft has been determined; nor also is the punishment of a money kind such as the highest amercement etc., but even a corporal punishment, banishment etc. shall also be for a thief; so the Author proceeds 10

## Yājñavalkya, Verse 270

By several (varieties of) corporal punishments such as impaling on a cross, lopping off of the hands and the like means of corporal punishments for thefts in the case of others (which will be stated hereafter), for like cases the Brāhmaṇas should be branded on the forehead and banished from one's Kingdom (270). 15

## Sūlapāṇi

## Yājñavalkya, Verse 270

*Paḍhaś*, by corporal punishments, i. e. by means of punishments to be stated hereafter; *sachīṇam*, 'with a brand,' i. e. together with the mark of his own foot. As says Bṛhan Manu: "On account of the property having been acquired by illegal means, the wealth of these is tainted with sin. Therefore the king should inflict corporal punishments on them, and should not merely inflict a pecuniary fine" (270). 20 25

The Author mentions the means of getting at the stolen property after the thief has been discovered

## Yājñavalkya, Verse 271

In the case of a murder or a theft, the blame attaches to the village-officer, when the offender has not (been traced to have) gone out; to the owner of a pasture ground; to the detectives of thieves, when (the offence is committed) on the high-way or in a non-pasture ground. 30

Mītākṣharā:—If the killing of man or of any other living animal, or a deprivation of property, takes place in a village, then the blame for neglecting a thief would be that of the headman of the village 35



alone; and to atone for it, he himself must catch the thief and hand (him) over to the king. When he is unable to do that, he should pay the stolen amount to the owner, if he does not point out the foot-marks of the thief to have emerged from out of the village and beyond it.

- 5 When, moreover, such marks are pointed out, where the same (appear to) enter, the owner of such property alone should make over the stolen amount. Likewise Nārada<sup>1</sup> also says: "He, within whose pasture-ground a robbery has been committed, must trace the thief to the best of his power, or else he must make good what has been stolen, when the  
10 "foot-marks cannot be traced beyond (into another man's ground) (16). "When the foot-marks, after leaving that ground, are lost and cannot be traced any further, the neighbours, the watchmen on the road, and "governors of that region shall be made to pay<sup>2</sup> (17)."

- When, however, the theft takes place in a pasture-ground, the re-  
15 sponsibility rests with the owner of the pasture alone. When, however, the deprivation takes place on the road itself, or in a *nonpasture ground*, *awilake*, i. e. in a place other than a pasture-ground, then the blame lies with the detectives of thieves, or the watchman of the road, or the governor of that region.

20 *Śūlpāṇī*  
*Yājñavalkya, Verse 271*

- When a man or the like has been killed, or a cow etc. has been stolen in a village, the blame attaches to the village headman, if the foot-mark  
25 of the man etc. is not seen emerging out of the village. "Outside the village," however, i. e. on the road, then it (i. e. the blame) is of the owner of the pasture ground. In non-pastures i. e. places other than pastures such as fields etc. of the officer appointed to guard against thieves (271).

*Yājñavalkya, Verse 272*

- 30 A village, however, should pay (when) within its own limits, or that where the foot (mark) has reached. When beyond a *krośa*, five of the surrounding villages, or even ten villages also.

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*Mitākṣharā*:—Moreover, when however, a theft &c., occurs outside a village, but in a field which is on the outskirts of its boundary limits, then the inhabitants of that village alone should pay, if the foot-mark

of the thief has not emerged out beyond the boundary limit. When, however, it has emerged out, that village whereinto the foot-marks of the thief enter, shall alone make over the thief and do other acts.

When, however, any one is killed or robbed midway between several towns, and in a place which is more than a *krośa*<sup>1</sup> outside (each of them), and foot-marks of the thief have also been lost on account of the pressure of the crowd, then in such a case five villages i. e. the five villages together, or ten villages i. e. the ten villages together, should pay. The optional clause is used to indicate that as much should be done as would bring about a restoration of the property stolen &c, from the villages contiguous to the place. 5 10

When, however, the king is not able to cause property stolen elsewhere to be restored, then he should indeed pay from his own treasury, *vide* the text of Gautama:<sup>2</sup> "Having recovered property 'stolen by thieves, he shall return it to the owner, or he shall pay out 'of his own treasury." 15

In case of a doubt as to whether property was stolen or not, the decision should be made by means of human proof or by ordeal, as has been laid down by Vṛddha-Manu: "If, while the property 'is being caused to be restored, a doubt arises as to a theft (having 'taken place), the person robbed should be put to an oath, or he may 'establish (his case) by (the evidence of) his relatives." 20

#### Vīramitrodaya

#### Yājñavalkya. Verses 271-72

In the case of manslaughter, or theft of property, or robbery etc. the fault is of the headman of the village for conniving at a thief; therefore the village, its master, should restore back property which has been lost within his territory, if the foot-prints of the thief do not emerge out of the village. If, however, they emerge out then wherever they are traced as entering, the master of that territory should give. On the pasture-ground for the grazing of the cattle etc, the responsibility for assault or robbery is of the owner. At a place other than the pasture ground the responsibility 25 30

1. i. e. two English miles,

2. Ch. X. 46-47.

3. i. e. when the thieves are not traced, or having been traced have vanished, then the king should pay from his own treasury. Hiraṇyaka.

for assault, robbery etc. is of the patrol of the road in regard to the tracing of the theft. The half of the verse beginning with 'within its limits etc.' is also connected with this. If, however, an assault or a robbery occur at a place intervening between several villages, and the

- 5 foot-prints also are obliterated by the pressure of the crowd etc. then the people of the five villages, or of ten villages collectively, should pay. The word *atha* 'or, even' is used as indicative of neglect. Thus the result is that those who are in the neighbourhood of a *krśā* should pay. In some books for *krśāt* the reading is *krśādī*,  
10 'from the cultivated land.' By the first use of the word *tu* is excluded the responsibility beyond the territory.

- When, however, the king is not able to compel the restoration from others of the property stolen, then the king himself should pay what was stolen by the thief. Since Gautama<sup>1</sup> has observed: "Having  
15 "recovered property stolen by thieves he shall return it to the owner, "or he shall pay out of his own treasury" (271-72).

### Śūlapāṇi

Yājñavalkya, Verse 272

- What is lost within one's boundary, the village itself should pay; or  
20 where the foot-marks emerge out of a cultivated place and elsewhere, what is stolen away, the men of five villages together should give by regard to the contiguity, or men of ten villages is the optional rule ( 272 ).

The Author mentions a special penalty in cases of particular offences  
Yājñavalkya, Verse 273

- 25 The King shall cause to be impaled on a stake *Bandigrāhas*, likewise the stealers of horses and elephants, as also those who commit murders with violence.

- Mitākṣharā:—The king should cause to be impaled on a stake the *Bandigrāhas*<sup>2</sup> and like others, or also men who commit murders accom-  
30 panied with violence and force. This, moreover, is a rule regarding only one kind of corporal punishment, *vide* the text of Manu<sup>3</sup>: "Those who "break into a ( royal ) storehouse, an armoury, or a temple, and those "who steal elephants, horses, or chariots, he shall indeed slay without "hesitation."

1. Ch. X. 46-47

2. *Bandigrāhas* are those persons who forcibly take or carry away others as prisoners.

3. Ch. IX, 280.

## Śūlapāṇi

Yājñavalkya, Verse 273

Those desperados, who regardless of life, and with the object of (extracting) money, carry wealthy persons as prisoners, these, as also those who steal elephants and horses, similarly those who kill with violence, all these the king should impale on stakes (273). 5

## Yājñavalkya, Verse 274

The pick-pockets and cut-purses should be deprived of the tongs of their hands; for a second offence, they should be deprived of a hand or a foot.

Mitākṣharā:—Moreover, he who throws up the clothes or other things i. e. carries them away is *utkṣhepakāḥ*, a *pick-pocket*. He who carries away gold or other things tied in a cloth &c. either by loosening or cutting (the knot) is *granthi-bhedakāḥ*, a *cut-purse*. These two respectively should have the forefinger and the thumb resembling a tongs removed from their hands. 15

Dvitiyāparārdhe, on a second offence, moreover, a hand and a foot (joined together make up the compound expression) 'a hand and a foot.' That and each one of these, is 'a hand and a foot.' Those two should each have 'a hand or a foot' taken away from them i. e. of the pick-pocket and the cut-purse a hand and a foot should be cut off from each. This is the meaning. 20

This also has a reference to articles which bring on the highest Śāhasa, since Nārada<sup>1</sup> has observed. "The amputation of that limb { with which the crime had been committed } is declared to be the punishment for a Śāhasa of the highest degree." 25

For a third offence, however, death alone (is the punishment). So Manu<sup>2</sup> (says): "On the first conviction he should cause two fingers of a cut-purse to be cut off; on the second, a hand and a foot; on the third, he deserves death."

The meaning is, the punishment should be determined upon by regard to the caste and the amount of property, as also the value &c. 30

## Śūlapāṇi

Yājñavalkya, Verse 274

One who robs by lifting is a *lifter*. One who steals gold etc. tied in a cloth by breaking open the knot is a *cut-purse*. These two for a first offence should be deprived of the thumb and the first finger of the hand; for a second offence, should have their one hand and foot lopped off, and for the third offence these should be sentenced to death. As Manu<sup>2</sup> has stated: "For the third he incurs a capital punishment" (274). 35

As it is impossible to lay down several punishments in regard to each kind of property, having regard to the fact that the causes for a heavy or light punishment are innumerable, viz. the caste, the amount of the property, the relation, or the appropriation and disposal (of the same), as also the age, capacity, the qualities, the country, the time, and such other causes; the Author mentions a general rule for determining a punishment

### Yājñavalkya, Verse 275

In the case of the theft of inferior, middling, and superior articles, the fine shall be according to the value. In passing sentence, the place, the time, the age and the capacity should be taken into consideration.

Mitākṣharā:—In the case of a *theft*, barāṇe, of articles of inferior, middling, as also of superior quality, the punishment should be determined *sāra*to, according to the value, i. e. the price (of the article &c.). The nature of an article of an inferior or other quality has been mentioned by Nārada<sup>1</sup>: "Earthenware,—a seat, a couch, bone, wood, leather, grass, and the like, leguminous<sup>2</sup> grain, and prepared food, these are instances of articles of small value (14). Clothes other than those made of silk, and likewise cattle other than cows, and metals other than gold, are articles of middling value, as also are rice and barley (15). Gold, jewels, a silken cloth, a woman, a man, a cow, an elephant, and a horse, and the property belonging to a god, a Brāhmana, or a king, must be understood as articles of superior value (16)."

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The same Author<sup>3</sup> has pointed out a rule of punishment in terms of a *Sāhasa* of the inferior, middling, or superior quality in the case of articles of three classes, derived from the general rule: "That series of punishments which has been ordained by the wise for the three kinds of *Sāhasas* is equally applicable even to theft regarding articles of the three classes respectively." In the case of a jewel or a pot which is made of earth, or of cattle other than cows and horses, such as a buffalo, a ram, and the like, and also gold, grain &c., belonging to a Brāhmana, there is a rule of differentiation as to higher or lower quality

1. Ch. XIV. 15-16.

2. *Samiddhigṛa*—Is any pulse or grain growing in pods; a leguminous grain.

3. Ch. XIV. 21. Gautama Ch. XII, 15-17.

and thus when it is desired to determine upon a higher or a lower form of punishment, it should be done by regard to the price &c.

There, moreover, *daṇḍakarmaṇi*, in passing sentence, for fixing upon a particular punishment, the country, the time, and the age (of the offender) &c. should be carefully taken into consideration, as the determining causes thereof. These, moreover, also imply the (consideration as to) the caste, the size of the (particular) article, and (the extent of) the appropriation, or like other matters. Moreover:  
"The guilt of a *S'ūdra* in the case of a theft is eight-fold; and twice that and higher still will be the punishment in each higher caste, and  
"in cases of offences by the learned the punishment shall be very much increased." The meaning is this: By the word 'guilt' (used) here, the punishment is intended. Whatever punishment has been prescribed for a particular theft, the same should be administered eight-fold in the case of theft by a learned *S'ūdra*. In the case of learned men of other castes, moreover, *e. g.* of the *Vaiśya*, *Kṣatriya* or *Brahmana* castes, the guilt is two-fold and higher up *i. e.* sixteen, thirty-two, and sixty-four<sup>2</sup> times the amount; since there is a higher punishment for a theft committed by a learned *S'ūdra*.

The same meaning has been brought out by *Manu*<sup>3</sup> also: "In (a case of) theft the guilt of a *S'ūdra* is eight-fold, sixteen times, that of a *Vaiśya*, and thirty-two times in the case of a *Kṣatriya* (337). That of a *Brahmana* sixty-four-fold; or quite fully a hundred, or (even) twice four-and-sixty fold; (each of them) knowing the nature of the offence (338)."

Similarly, a higher punishment is also determined by the consequences (of the offence). As says *Manu*: "Of him who steals more than ten *Kumbhas* of grain, corporal punishment (shall be inflicted); in other cases he shall be fined eleven times as much, and shall be made to pay the property<sup>5</sup> (to the owner)." A *Kumbha* is equal to twenty *Dronas*.

1 Bālamibhāṣita assigns this text to *Varaṇasī*, but it is not found in the *Dharmasūtras* of that author.

2 There is a mistake in the print of the text here (p. 148 l. 12)

Instead of *चोऽष्टविंशतिं च पञ्चविंशतिं* read *चोऽष्टविंशतिं च पञ्चविंशतिं*

3 Ch. VIII 337-338

4. Ch. VIII 320.

5. or its value.



applicable to trifling articles, viz: "the fine shall be twice the value of the article," has a reference to articles of a very small value *e. g.* an earthen pot or the like. Moreover, there is an excess of punishment also on account of an aggravation of the offence: "The king

"should cut off the hands of those thieves who make  
PAGE 149\* "holes in the walls and commit thefts at night, and  
"shall impale them on a pointed stake." Thus all

these are innumerable, and cannot be specifically mentioned in regard to each article, and so a lower or higher form of punishment should be determined by regard to the several circumstances such as the caste, the quality and the quantity ( of the subject matter ), and like others.

Of travellers, however, there is no punishment for slight infringements, as says Manu: "A twice-born (man) who is travelling and whose provisions are exhausted, shall not be fined, if he takes a couple of stalks of sugar-cane, or a couple of roots from the field of another man." Also: "Of gram, rice, wheat, barley, millet, and bean, a handful may be taken by those who are on their way in a journey, if not prohibited. Likewise, he who has not eaten at six meals, may take at the seventh meal from a man who neglects his sacred duties, without ( however ) making a provision for the morrow."

## Sūlapāṇi

## Yājñavalkya, Verse 275

For stealing articles of low, middling, and highest qualities, such as fuel, pots, salt, jaggree, camphor, saffron etc. the punishment should be administered by taking into consideration the original price, the place, and the time of the robbery in determining the penalty in passing sentence ( 275 )

The Author mentions a punishment even for one who is not himself a thief, but who helps a thief

## Yājñavalkya, Verse 276

To him who knowingly supplies food, lodging, fire, water, counsel, implements, and expenses, to a thief or a murderer, the punishment shall be the highest.

1. Author not known. 2. Ch. VIII. 341. 3. Ch. XI. 16.

4. *i. e.* when a man has been compelled to fast for three successive days and three nights, he may ( even ) steal, but only from one who does not answer the responsibilities enjoined by the Śāstra, and, the theft also should not be with a view to store up provisions, not even for the morrow, but simply to satisfy the hunger so keenly felt.



Mitākṣharā:—*Bhaktam*, food, for eating; *avakāśo*, lodging, i.e. a resting place; *agniḥ*, fire, for removing the cold of the thief; *udakam*, water, for one thirsty; *mantrāḥ*, counsel, i. e. advice in the matter of a theft; *upakaraṇam*, implement, i. e. the means for committing a theft; *wyayaḥ*,  
 5 *expenses*, i. e. in the journey of one going out to another region for committing a theft. He who offers these *chaurasya*, to a thief, *hantur wā*, or to a murderer, *jānannapī*, even (after) knowing him, (to be such), for him the punishment shall be the highest amercement.

A blame attaches even to those who tolerate a thief, since Nārada<sup>1</sup>  
 10 has said: "Or those who neglect<sup>2</sup> them though able (to arrest), "partake of (the responsibility of) their crime themselves."

### Śūlapāṇī

Now an extension of the (rules regarding the) thieves

Yājñavalkya, Verse 276

15 *Bhaktam*, 'food', i.e. for eating; 'lodging', a resting place; fire for relieving cold, water, for one thirsty; counsel, i. e. advice; implements, the means for committing a theft; expenses, i. e. in a journey of one going out to another region for committing theft; he who deliberately gives these to a thief or to a homicide, for him the penalty shall be the highest  
 20 amercement. Kātyāyana says: "Those who purchase articles, as also "those who accept as donations, all these are equally punishable, as also "those who conceal them " (276).

### Yājñavalkya, Verse 277

For giving a blow with a weapon, and also for causing an abortion,  
 25 the punishment is the highest; for the killing of a man or a woman the punishment may be the highest or the lowest.

Mitākṣharā:—*Śastrāvapātane*, for giving a blow with a weapon, on the limbs of another, and *garbhasya pātane*, for causing abortion, in cases other than that of a female slave or of a Brāhmana, the punishment  
 30 i. e. the penalty shall be the highest. For causing the abortion of a female slave, however, a fine of a hundred has been mentioned (in the

1. Ch. XIV, 19.

2. अज्ञ—*is* forbearance or neglect, connivance. The meaning here is that those men who exhibit a kind of passiveness regarding criminals, even when they have the capacity to arrest them, knowing them to be such, render themselves responsible as accomplices

text<sup>1</sup>) "One who destroys the foetus of a female slave. As for the foetus of a Brāhmana, the Author will mention an extension of the rule in<sup>2</sup> "One who destroys a foetus unknowingly &c" And for the murder of a man or a woman the highest or the lowest punishment must be understood as laid down, having regard to the character, mode of living, and such other circumstances (regarding the deceased) 3

## Sūlapāṇi

Yājñavalkya, Verse 277

For destroying a womb by striking a weapon the punishment is the highest (amercement) For killing a superior man or woman, the highest, 10  
and for murdering a lower man or woman, the lowest amercement (277)

## Yājñavalkya, Verse 278

A woman who is superlatively wicked, who destroys males, who breaks reservoirs, shall, if not pregnant, be plunged into water after a stone being tied 15

Mitākṣharā — Moreover, one who is extremely wicked is vipradushtā, a superlatively wicked woman, e.g. one who causes the destruction of a child in the embryo, also who causes herself to miscarry, as also she who kills a man, and one who breaks reservoirs. these women, if not pregnant, should be plunged into water, after tying a stone round 20  
their neck, so that they may not swim up

## Sūlapāṇi

Yājñavalkya, Verse 278

A woman who is superlatively wicked &c who is an adulteress, as also a man who destroys an embankment, should have a stone tied to them and be immersed in water, the woman, also if she be not pregnant (278) 25

## Yājñavalkya, Verse 279

One who administers poison, or sets fire or kills her husband, preceptor or her own child, shall be deprived of her ears, hands nose and lips and be caused to be killed by bullocks 30

1 II 236 see p. 1281 I 9 above

2 Visveśvara and Rajambhāṣya both say it is in the Iraraschittikhyaya, but it is not to be found there. It is probably a reference to Verse 280 following hereafter

Mitāksharâ — Moreover, (here again) one who is not pregnant is understood. She also who administers & puts poison into the food drink &c with the object of killing others, she again, who sets fire to a village &c that it may be burnt, likewise, one who causes her own husband preceptor, or children to be killed such a one should have her ears, hands, nose and hips cut off, and herself caused to be killed by means of wild and untamed bulls.

This statement of a rule regarding a Śhasika and made in the chapter on theft should be understood to be made incidentally.

10

### Vîramitrodaya

While treating particularly of (the law of) theft, the Author mentions penalties for similar offences.

### Yājñavalkya Verses 273-79

Those who imprison moneyed men and keep them are (called) *Bandhārāhas* (men lifters), also those who steal horses or elephants, and those who forcibly kill men, such thieves the king should impale on spikes as (for) a capital punishment (273).

One stealing clothes after lifting them, is also stealing gold etc. tied in a cloth after untying the knot, should be deprived of the fore-finger and the thumb, and on a second offence of pick pocketing, the king should deprive them either of a foot or a hand (274).

For stealing articles of low, middling, or high value, the punishment should be administered by regard to the value of the article equal to its price.

In the matter of determining the punishment, the country and other circumstances also should be taken into consideration by the king. There, says Nārada<sup>1</sup> "Earthen pots, bed stands, bones, wood, hide, grass, and the like, as also leguminous grains and cooked food are known as articles of low value. Clothes excepting silken ones, as also beasts excepting cow, and metals excepting gold, are articles of middling value, as also are paddy and barley. Gold, jewels, silken articles, women men, cow, elephants, horses and articles belonging to the deity and the Brāhmanas should be regarded as articles of the highest value."

By the use of the word *tathā*, 'also', is included the addition of the king. The word *mahādāyaka* used here after discriminates

<sup>1</sup> Ch. XIV, 14-16

such elephants, horses as belong to the king. By the first use of the word *cha* are included those who destroy the chariots, by the second use of the word *cha* are included those who break through a fire place etc *vide* the text of *Manu*¹ “Those who break through the building containing fire or weapons or the temples of Gods, as also those 5  
 “who destroy the elephants, the horses and chariots, the king should  
 “certainly, chastise without hesitation. By the use of the word *eva*,  
 “certainly, is excluded any monetary penalty. *Manu*² has observed  
 “By reason of having acquired money by unjust means, their property  
 “has a taint in it, therefore the king should punish them corporally 10  
 “and should not inflict (merely) a monetary punishment (275)

For him who offers food, place for residence, or fire for relieving cold, or offering fire, water etc which would relieve cold, or instruments for stealing or killing such as a sword, or expenses for 15  
 the journey over travelling to distant countries, or any of these to  
 a thief of gold etc or to a homicide or the like, even though not  
 knowing him as a thief, for such a one although not a thief, the  
 highest : i.e. the one equal for a thief, alone is the punishment in  
 conformity with the following text of *Narada* “Those who invite or  
 “those who give counsel or offer an asylum, all these are regarded as 20  
 “equally amenable to punishment, as also those who conceal them  
 “Those who give food or time, as also those who neglect running after  
 “thieves when they have capacity, these also are guilty of that offence.  
 When the king is not able to ward off thieves, one offering food etc  
 to a thief in the interest of self protection is not guilty, *vide* this 25  
 text of *Vishnu*³ “Except when the king is unable (276)

For striking the body of another with a weapon, and for bringing about an abortion excepting in the case of a fetus of a female slave, or of a Brahmana, the penalty is the highest amercement for destroying i.e. 30  
 killing the wives of particular persons such as characterized by their  
 being Brahmanas, the penalty shall be the highest or the lowest amercement  
*Wd*,⁴ or the option (indicated here) is (to be exercised) by  
 regard to the general behaviour and character. By the use of the word *api*  
 i.e. ‘also’, in the case of others than those known by their behaviour and  
 character, the penalty shall be the middling amercement. By the use of 35  
 the word *cha*, having regard to the text of *Vishnu*⁵ “He who steals

1 See Ch IX 280

2 Not found in *Manu*

3 Ch XIV 19

4 Ch V 17 5 Ch V 87

"gems (shall pay) the highest amercement" is included the theft of a not valuable jewel (277)

A woman who is superlatively wicked, who kills the foetus : c causes her own abortion, who destroys males, as also one who breaks  
3 reservoirs, should be plunged into water after a stone being tied to her neck, provided they are not pregnant. By the first use of *cha* are included males who are poisoners or incendiaries. By the second use of the *cha* are included acts stated in the text of Sankha viz. "For  
10 'breaking open a well, a reservoir, a tank used for drinking water, or 'for polluting liquid things, as also for offering a non slave woman 'to a slave (278)

A woman who is a poisoner or incendiary, or who brings about the death of the husband the father etc, or of the child, should be deprived of her ear, nose and lips, and be caused to be killed by a bull (273-79)

15

Sulapant

Yājñavalkya Verse 279

The poisoner and the incendiary as well as a woman who murders her husband and others should have their ears hands nose and the lip lopped off and be caused to be destroyed by sharp horned cows (279)

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20 Where a murder has been committed and the murderer is not known, the Author mentions the means of detecting the murderer

Yājñavalkya, Verse 280

Of one who is killed by an unknown ( person ) the sons and relations should be immediately questioned as regards any quarrel as also separately  
25 such women of his as were in love with other men

Mitāksharâ — Of one who has been killed by an unknown individual the son\* and all near relations *kalahamāsu prashjavyah* should immediately be questioned as regards any quarrel thus With whom had he had a quarrel '1 Likewise such women belonging to the deceased, and who  
30 were in love with other men : c were adulterous, should also be questioned

Sûlapâni

Yājñavalkya, Verse 280

Of one who has been killed by an unknown person the sons and relatives should immediately be questioned by the king's officers about any previous quarrel. Also his women in love with other men should each be questioned separately (280)

How should they be questioned? So the Author says

Yājñavalkya, Verse 281

"Was he fond of women wealth or a wife?" or "With whom did he go?" Or, (the king) may minutely make inquiries of the people living in the vicinity of the place of murder 10

Mitâksharâ — Was he fond of women? 'Had he a greed for money?' or 'Had he a desire to earn a livelihood?' or thus 'For what woman had he a fondness and how is she connected?' 'For which wealth had he a fondness?' or 'Where did he think of securing his livelihood?' or 'With whom did he go to another country?' Thus in various ways should his adulterous women be separately questioned after giving them assurances 15

Likewise, such men e.g. the cowherds foresters and others as were in the neighbourhood of the place of murder should also be questioned in confidence. Thus after determining upon the murderer by several means such as these, a punishment adequate for him may be declared 20

Paramitrodâya

In the text In the case of murder or theft &c murder is stated by way of illustration there how can it be determined that he is a murderer? Anticipating this in the context the Author suggests an answer 25

Yājñavalkya Verses 280 & 281

Where a person is killed and it is not known by what particular individual he was killed there his sons and relations should immediately be questioned thus "with whom had he a quarrel?" with a view to (solve) the doubt regarding the escape of the thief his women such as wife sister etc "With which other persons were they in love?" should each be separately questioned so as to avoid non disclosure through shyness in the presence of each other (280) 30

And his sons and relations should be asked whether he was fond of women, or of money, or of employment, and with whom he had gone. In the absence of sons, relations, and others, persons in the vicinity of (the place of) death such as the cow-herd and the forester, he should question after creating confidence. By the use of the word *cha*, 'also', the Author includes the question such as 'with whose wife was he in love'? By the use of the word *apr*, 'also', is included the suggestion that even without a question one should find out a trace of enmity (280-81).

### Śūlapāṇi

10 Yājñavalkya, Verse 281

The Investigating officer of the state should slowly and persistently question the people of the locality as to whether he was addicted to women, was covetous of wealth, or was looking out for a living, as also with whom he had gone, or the woman also, whose was she and the like. Bṛhaspati<sup>1</sup> says: "Where a corpse is found, but the murderer cannot be discovered, the king shall trace him by drawing an inference from previous en-  
15 mities of his" (281).

### Yājñavalkya, Verse 282

20 Those who set fire to a field, a house, a forest, a village, a pasture-ground or a threshing floor, likewise he who carnally knows the wives of the king, shall be burnt in a fire of grass.

Mātākṣharā—Moreover, those who set fire to *kṣhetram*, a field, in which the fruits and the crops have ripened. *Wesma* means a house; *vanam*, a forest i.e. a wild forest or a pleasure forest; village; *vivitam*, a pasture ground has<sup>2</sup> been explained; or *khalam*, a threshing floor, as also he who has carnal intercourse with a wife of the king; all these should be covered with the *raraya*<sup>3</sup> grass, and burnt. This punishment has been mentioned here, as it is incidental to the punishment of death, (which accrues) to the incendiaries of fields &c.

30 Thus ends the Chapter on Theft.

1. Ch XXII, 34.

2. See Yājñ II, 160 (2) and the Mātākṣharā thereon p. 1171, II 17-18 above.

3. Straw—a kind of grass at the root of which is found the fragrant *kāṣa* or कषः See Amara II, 4, 164.—the *Andropogon Muricatus*.

**Vīramitrodaya**

Now on the occasion of mentioning the penalties for theft and (causing) death, the Author states the penalties for a like offence

**Yājñavalkya, Verse 282**

The persons setting fire to any one of the six things such as a field 5  
and the rest, as also those having sexual intercourse with the wife of  
the king, should be covered with the *urāna* grass and burnt in its fire  
By the use of the word *cha* are included those stated by Manu<sup>1</sup> in the  
text 112 "He who destroys a rampart (of a town), or fills up the ditch, or  
"who breaks through the (town) gates, should be immediately killed" 10  
By the use of the word *tu*, however, the Author excludes its destruction  
by any other means, as says Kātyāyana "Either through a desire for  
"securing a friend, or earning wealth, one wishing the welfare of the  
"king and the people should never let off desperadoes who are a danger  
"to all beings The king who either through covetousness or through 15  
"fear does not destroy sinners, there a commotion springs up in his  
"territory and he is deprived of (his) kingdom

Nārada<sup>2</sup> "This law of punishment has been generally stated for all,  
"excepting corporal punishment for a Brahmana, a Brahmana should not  
"be killed, in his case the punishment is shaving of the head, banishment 20  
"from the town with a brand mark of a culprit on the forehead and a  
"parade on a donkey Yama "Never shall at any place be corporal  
"punishment for a Brahmana, he should be kept in prison under restraint,  
"and the king should give him food, or he should be tied with a rope, and  
"the king should compel him to do labour for a month or half a month 25  
"Taking into consideration the real subject matter, having regard to the  
"offence, a Brahmana may be compelled to perform works forbidden  
"(for him) "

Other punishments are passed over through fear of prolixity.

Here ends in the commentary on Yājñavalkya 30  
the Chapter on Theft

**Sulapāni****Yājñavalkya Verse 282**

Those who set fire to a field etc, those who have intercourse with  
the king's wives should be burnt on a pile of fire, the pile made of *urāna* 35  
or other grass (282)

Here ends the Chapter on Theft.





"Two homonymous words coming together indicating this happens 'therein or with that' a Bahuvrīhi compound is formed' and under another rule 11. 'The affix *ich* (इ) comes after a Bahuvrīhi when 'the compound denotes a reciprocity of action' the affix *ich* is added at the end of the compound. And as it is in an adverbial form, the instrumental case is silent. Therefore the meaning is this [From his amusing himself with another's wife when both hold each other's hair, or from the fresh signs of amorous intercourse, such as the marks created by the nails of the hands, or by the teeth and the like, or by the admission (of the fact) by both, (thus) having known him to have attempted to commit adultery, he should be arrested. The use of the expression 'another's wife' is with a view to exclude a woman who has been appointed? (to beget issue), or a protected female slave.

Sūlapāni

Yājñavalkya, Verse 283

In regard to adultery: intercourse with other's women one may be apprehended while they mutually grasp each other's hair or by marks of amorous contact such as the scars by the nail or teeth or by the admission of the woman or the man (283)

Yājñavalkya, Verse 284

Touching the knot of the lower garment, the breasts the upper garments, thighs, and the hair, holding conversation at an improper place and time as also sitting together on one seat

Mitāksharā —Moreover, he again, who behaves as if with a lustful desire towards another's wife by touching the part (of her body) bearing the knot of the (lower) garment, or the garment covering her breasts, or the lower parts of her body or the hair of her head, likewise, he who holds conversation with her at an improper place, adds: e in a place which is lonely or where crowds of people have

1 Panini V 4—127 इत्थं सम्पद्यते

2 The whole formation is based on five rules of grammar: the two mentioned above and three more: Panini VI 3—137 अस्मादि ह्रस्वे under which the vowel at the end of the first member is elongated (३३ केन) the adverbial compound has a support from Panini II 1—17 निरुपगम्यते and the dropping or elision of the instrumental is accounted for by Panini II 4 82 अस्मदाद् एव

Rajambhāṭṭa

3 e under a Niyoga or appointment to beget an issue

gathered together, or which is obscured by darkness, or who closets himself with another's wife on one sofa or any other like seat, as if intent on having carnal intercourse with her, such a one should be arrested as one who had attempted to commit adultery

- 5 This rule, however, applies to a man about whom there is a suspicion as to an offence. Of any other, however, there is no guilt, as says Manu<sup>1</sup> "That man however, not before accused, who holds conversation for some (good) reason, shall not incur any guilt, since  
 10 "in him there is no transgression." It has been said by the same Author<sup>2</sup>, that he who forbears when touched by another's wife, such a one also may be apprehended. "He who touches a woman at an improper place, or forbears when (himself) touched, all that is considered as adulterous intercourse with mutual consent." It has been said by the Same sage<sup>3</sup> that he, moreover, who boastfully declares  
 15 before a company of gallants thus "I have enjoyed this charming accomplished woman times out of number"—such a one also may be apprehended. "When a man, actuated by vanity, folly, or braggardism" declares himself that he has enjoyed (the love of) a certain woman, that is also regarded as (constituting) an offence of adultery."

20

## Viramītrodaya

- Now on the occasion of treating an intercourse with the wife of the king the Author begins the title of his known as 'Adultery with Women, which has been split into three varieties by Vyāsa in the following manner "That has been designated as of three kinds, the lowest, the mid  
 25 "die and the highest. Conversations with another's wife in an improper (or lonely) place, throwing sidelong glances at each other, and (exchanging) smiles is known as the first kind of adultery. Sending fragrant scents and flowers, odours, ornaments, and clothes, and causing allure-ment by food and drink is known as the middlemost. Sitting together  
 30 "in the seat in a solitary place, mutually reclining against each other, as also pulling each other's hair is known as a complete act of adultery."

There, first the Author mentions the means by which adultery developing into sexual intercourse may be known.

<sup>1</sup> Ch VIII 35.

<sup>2</sup> Ch VIII 35.

<sup>3</sup> Not found in Manu. The text, however, is to be found in Narada Ch XII 29.

## Yājñavalkya Verses 283-84

*Kesakesi*, 'pulling each other's hair, i.e. pulling the braids of each other's hair or of the knot of the waist cloth at an improper place and time i.e. such as in a solitary place and at midnight or the like, having conversation and sitting together, in this manner a man may be apprehended as having had adultery with sexual intercourse with another's wife, that should be determined by the capacity for intercourse. It should be immediately apprehended by signs, the result of amour, such as the nail-scars etc. And also by the admissions of both the woman and the man as having a desire for sexual intercourse (283) 5

*Nāli*, 'knot, i.e. the knot of the wearing apparel, the covering of the breast i.e. the tying cloth, as also hair on the thighs, the touching of these. By the use of the word *cha*, 'and', is added the sending of fragrant scents, flowers etc. By the use of the word *eva* 'also', is discriminated suspicion 10

## Sūlapāni

## Yājñavalkya Verse 284

One pulling at the garment knot should be apprehended for adultery. The rest is clear. *Brhaspati*<sup>1</sup> mentions the distinctions in this 'Casting sidelong glances smiling at her, similarly sending a female messenger, touching her ornaments or clothes is termed an adulterous act of the first degree etc.' (Same as in *Viramītrodaya* citing *Pydsa* p. 1342 124-32) 20

The Author mentions a penalty for a man and a woman who, having been once prohibited, again hold conversation or do like acts

## Yājñavalkya, Verse 285

A woman being forbidden shall pay a hundred, while a man two hundred as a penalty, when the prohibition had been to both, their punishment is the same as for adultery 25

*Mukshaârâ* — *Pratishedhah* a prohibition is that where, one is prohibited e.g. by the husband, the father or the like. A woman who has been forbidden from holding conversation with a man and attempts to do the same (again) *satam dadyât* shall pay a hundred pawns as penalty. A man, moreover who sets about when similarly prohibited, shall pay two hundred. When, however, both the man and the woman were prohibited, and again attempt it then the same penalty as will be hereafter mentioned for adultery i.e. according to the 30

*Varnas* ( of the parties ) shall be understood ( for them ) This rule, however, holds in cases other than those of the wives of *Chāranas*<sup>1</sup> and the like since *Manu*<sup>2</sup> has laid down " This rule does not apply  
 5 " to the wives of *Chāranas*, nor of those who live on ( the<sup>3</sup> intrigues  
 " of ) their own ( wives ), for such men send their wives ( to others )  
 " or concealing themselves, allow them to hold criminal intercourse "

### Viramitrodaya

The Author mentions a penalty for a man and woman holding conversation although prohibited

10 *Vājñavalkya, Verse 285*

When prohibited by the father and others for ( holding ) conversation etc and the woman herself holds conversation with the man, then a hundred *panas*, when the man himself who is prohibited ( holds ), then he shall pay two-hundred *panas* as the penalty. When the man and  
 15 the woman both are prohibited and hold conversations with each other, then the highest amercement has been laid, as in the case of adultery, likewise in the same manner should the penalty be for them. This is the meaning. By the use of the word *tu*, ' however ', is excluded the prohibition of the other. This rule, however, is applicable in cases  
 20 other than the wives of *Charanas* etc *vide* the text of *Manu*<sup>4</sup> " This  
 ' rule does not apply to the wives of *Chāranas*, nor of those who live on  
 " ( the intrigues of ) their own ( wives ) For such men send their wives  
 " ( to others ), or concealing themselves, allow them to hold criminal  
 " intercourse ' ( 285 )

25 *Sūlapāni*

*Vājñavalkya, Verse 285*

A woman who has been prohibited by the husband or parents from holding a conversation etc and still is set on it shall pay a hundred *panas*. A man moreover, acting similarly ( shall pay ) two hundred. For both  
 30 having an intercourse although prohibited the punishment should be administered as has been prescribed. *Manu*<sup>5</sup> states a special rule " Beg  
 " gars as also hard- those who have taken a sacrificial vow, and similarly  
 artists may have conversation with women without prohibition ( 285 )

1 *Chāranas*—are actors or singers or persons of low repute maintaining themselves by mendicancy and singing &c. 2 Ch VIII 362

3 अन्वेषित ( *Anvेषित* ) ' who maintain themselves on their own ' 4

Ch VIII 352

5 Ch VIII 361

The Author now mentions the penalty for Adultery  
Yājñavalkya, Verse 286

In the case of one of the same class the highest amercement, in an Anuloma<sup>1</sup> (intercourse) the middle (amercement), but in a Prahoma<sup>1</sup>, death of the man, and the lopping off of the ear and the fike of the woman.

Mitāksharā.—In the case of a man of any of the four *varnas*, a man shall be fined one thousand and eighty *panas* for having intercourse with a woman of his own caste, but who was another's wife or protected. When, however, he has intercourse with a woman of a lower order, and who is not under the protection of any one, then he shall be fined in the middle amercement. When, moreover, he has intercourse with a woman of his own *varna* who was not under (any one's) protection, or with a woman of a lower *varna* who was under protection, then a special penalty has been stated by Manu<sup>2</sup>.

"A Brāhmana shall be fined a thousand, when he has intercourse with

"a guarded *uprā* woman<sup>3</sup> against her will, he

PAGE 132\* "shall be fined five hundred when he had con-

"nexion with one who was willing (378). A

"Brāhmana shall be compelled to pay a fine of one thousand if he

"has intercourse with women of two (classes)<sup>4</sup> who are under pro

"tection, for (a similar offence against) a *Sūdrā* woman the fine for

"a *Kṣatriya* and *Vaiśya* shall be one thousand (333)."

This, moreover shall be understood to hold in the case of women other than the wives of the preceptor or a friend, since Nārada<sup>5</sup> has observed: "Mother mother's sister, mother-in-law maternal-uncle's

"wife father's sister the wife of a paternal-uncle, or a friend or a

"pupil sister, her friend daughter-in-law (73), daughter, spiritual

"preceptor's wife, a woman of his own *Gotra* come (to him) for

"protection the queen, a female ascetic the nurse a virtuous woman,

"and a woman who is of the highest class (74). When a man carnally

"knows any one out of these women, he is said to have committed

"the offence of violating<sup>6</sup> the bed of a preceptor. For such a crime,

"no other punishment is ordained than the excision of the organ (76)."

1 See Acharadhyaya Chapter IV. These terms are used with reference to the man who commits the act of adultery.

2 Ch. VIII 378-383.

3 A Brāhman woman.

4 i.e. those mentioned in Manu Ch. VIII 382. 5 Ch. XII 73-75.

6 *ṛghāṇa* i.e. the special kind of crime where the offence is that of knowing carnally the preceptor's wife.

In the case of a *Pratibhā* offence, *e g* intercourse with a woman of the highest class, death (is the sentence) for a male of the Kṣatriya or other (lower) class. This, however, has a reference to a guarded woman, for any other, there is a pecuniary fine, *vide* the text of Manu<sup>1</sup>

- 3 "But even these two<sup>2</sup>, if they offend with a Brāhmaṇa, who is guarded, shall be punished like a *Sūdra*, or be burnt in a fire of dry grass (377)  
"If a Vaisya or a man of the Royal tribe has intercourse  
"with an unguarded Brāhmaṇa let him (i.e. the king) fine the  
"Vaisya five hundred<sup>3</sup>, but the Kṣatriya one thousand (376)" Of  
10 a *Sūdra*, moreover, having intercourse with an unguarded woman of the highest class, the punishments are the excision of the organ, and confiscation of the entire property, and of him having intercourse with a guarded woman (of a like description), the sentence is death and confiscation of the entire property, as has been stated by the same Sage<sup>3</sup>  
13 "A *Sūdra* having intercourse with a woman of a twice born class—  
"whether guarded or unguarded—if unguarded, he loses the organ,  
"and all his property if guarded, everything (even his life)"

- Of a woman, however, having intercourse with a man of a lower tribe, the ears—and by the use of the word *Āh*, 'and the like,'—the  
20 nose, should be lopped off. For one having intercourse with a man of a superior or equal tribe, a fine should be ordered

- This rule regarding the sentence of death &c, is (intended) only for the king, he alone having the right to govern, and not for every twice born individual. For such a one the holding of a weapon  
25 having been prohibited by the text<sup>5</sup> 'A Brāhmaṇa should not take  
'up a weapon even for inspecting (it)'

1 Ch VIII 377, 376

2 i.e. the Vaisya and Kṣatriya referred to in VIII 376

3 Ch VIII 374

4 Here the term used is quite general but from the text quoted next, it appears to be intended for a Brāhmaṇa

5 The Author of this text is not known. Bāṇabhaṭṭa, assigns it to Gautama but it is not found in that book. Gautama on the other hand allows the profession of a warrior for a Brāhmaṇa when he cannot obtain his livelihood by the ways prescribed for him. See Ch VII 6. To the same effect are the texts of Manu cited next

When however, while reporting to the king delay occurs in time and there is danger of the proper procedure being thwarted then one may himself kill an adulterer and the like the taking up of arms at such a time having been permitted by the text 'the twice born men may take up arms when (the performance of) Dharma is being obstructed', also<sup>2</sup> "By killing a desperado (intent on doing harm), the slayer incurs no guilt, whether (he does it) publicly or in secret, (for in such a case) fury recoils upon fury"

Likewise in the case of a Kṣatriya or a Vaisya each having intercourse with a woman of the other class<sup>3</sup> a fine in each case of one thousand *panas* must be understood That has been stated by Manu<sup>4</sup> "If a Vaisya approaches a guarded female of the Kṣatriya caste, or a Kṣatriya a guarded Vaisya woman they both deserve the same punishment as in the case of an unguarded Brāhmaṇa woman"

### Sūtapānt

Now the penalty for intercourse

Yājñavalkya Verse 286

For sexual intercourse with an unwitting woman of the same caste and under protection in the case of a Brāhmaṇa and the like the penalty is the highest amercement For intercourse with the father's sister etc death only, as the Author will state<sup>5</sup> further on in the third Chapter For having intercourse however, with one not under protection and of a lower order, the punishment is the middle amercement So says Manu<sup>6</sup> 'For a Brāhmaṇa having intercourse with an unprotected Kṣatriyā or a Vaisyā woman or with a Sūdrā the penalty shall be five hundred in the case of an *andapya* woman however it shall be one thousand (385) A Brāhmaṇa should be fined one thousand for approaching these when under protection For the Kṣatriya and a Vaisya approaching a Sūdrā woman the penalty shall be one thousand (384)

For intercourse with women of higher orders in the case of Sūdras etc death (shall be the punishment) and of the women the ear nose etc should be cut off (286)

1 Of Manu Ch VIII 348

2 Manu Ch VIII 361 See page 36 II 5-8

3 See the text of Manu cited next which makes this clear

4 Ch VIII 382

5 Yajñ III 232

- 6 Ch VIII 385, 384



On the occasion of considering offences regarding the wives of others, the Author mentions the punishment (for an offence) regarding a maiden also

### Yājñavalkya, Verse 287

If any one kidnap a maiden having ornaments on, he shall pay the highest amercement, and the lowest amercement in other cases, when the maiden belonged to the same *varṇa*; in the case of a maiden of a superior class, death has been ordained (as the punishment).

Mitākṣharā:—One kidnapping a maiden of his own class, who is about to be married, and who had been decked with ornaments, shall be punished in the highest amercement; and one kidnapping a maiden of his own tribe not approaching a marriage, (shall be fined) in the lowest amercement. For a Kṣatriya or any other carrying away a maiden of the highest tribe death alone (is the sentence). From the rule as to punishment, it also appears (to be intended to be laid down) that the girl should be taken away from her abductor and be made over to some one else.

### Śūlapāṇi

Now the despoiling of a maiden

### Yājñavalkya, Verse 287

One kidnapping for intercourse, an unwilling maiden decorated with ornaments, shall pay the highest amercement. One, however, otherwise carrying her away, the lowest amercement. That, moreover, is in the case of the women of the same caste. In the case of higher orders, however, for the kidnapper death alone (shall be the punishment).

The Author mentions a penalty for taking away girls of inferior tribes

### Yājñavalkya, Verse 288 (1)

In the case of willing maidens of inferior classes, there is no offence; otherwise, however, (there is) a punishment.

Mitākṣharā:—If one carries away a maiden of an inferior tribe who is full of love (for him), then there being no offence, (there is) no punishment. Anyathā tu, *otherwise however, i. e.* for one kidnapping an unwilling one, the lowest amercement shall be the punishment.

The Author mentions a penalty for defiling a maiden

Yājñavalkya, Verse 288 (2)

For defiling, however, the lopping off of the hands; and for (doing) similar acts towards one of a higher class, death

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Mitākṣharā—'In the case of maidens of lower tribes' is understood. If one forcibly defiles, by nail-sears or otherwise, a maiden, who had no sexual desire, then his hand should be lopped off, when, moreover, he defiles a maiden of a like description, by penetrating into the female organ by thrusting in his fingers, then the punishment is the lopping off of the fingers, together with the fine of six hundred as stated by Manu. "But if any man through insolence forcibly comminates a maiden two of his fingers shall instantly be cut off, and he also deserves a fine of six hundred." When however, he similarly defiles as before, one having a sexual desire even then a special rule has been stated by the same. "A man of an equal class defiling a maiden having a sexual desire shall not incur the (punishment of) amputation of his fingers but shall, however be compelled to pay a fine of two hundred, as a deterrent for a (like) repetition."

When, however, a maiden herself or a sharp woman defiles another maiden, there also a special rule has been stated by the same Sage. "A maiden, who herself operates upon a maiden, for such a one the fine is of two hundred (369). But a woman who pollutes a damsel shall instantly deserve a shaving, and also the lopping off of her two fingers and likewise (the punishment) to be carried on a donkey." "Operates upon a maiden" i. e. penetrates into the female organ of a maiden.

When, however, a man has intercourse with a maiden of the highest tribe, then whether she was willing or unwilling a Kṣatriya and others shall invariably incur death *vide* the text of Manu. "A man of a lower tribe who has intercourse with a woman of a higher class shall deserve corporal punishment."

When one has intercourse with one of his own class who has a sexual desire, then he shall pay the maiden's fee of a pair of cows to

1 Ch VIII 367

3 Ch VIII 369-370

2 Ch VIII 368

4 Ch VIII 366

- her father; if she be unwilling, the maiden's fee to the father, and an equal (amount) as fine to the king. For one having intercourse with one of his own *varṇa* but having no desire, corporal punishment alone: as says Manu: "He who has intercourse with one of an equal class, shall pay the maiden's fee to the father if he desires," also: "He who violates an unwilling maiden shall instantly suffer corporal punishment; but one defiling a maiden of an equal class who has a sexual desire, shall not suffer corporal punishment"

## Śūlapāṇi

## Yājñavalkya, Verse 288

- In the case of willing women of the lower order, there is no blame for having intercourse. In the case of the maidens of the same caste without an intercourse despoiling through arrogance by thrusting the finger, the cutting off of the hands. In the case of the superior women, death only (288).

## Yājñavalkya, Verse 289

- For slandering a woman, a man shall pay a hundred; and two hundred for levelling a false accusation. For connexion with beasts he shall be compelled to pay a hundred; and the middling fine for connexion with a low woman or a cow.

- Mṭākṣharā:—Moreover, having regard to the context, a maiden is intended here by the word 'woman'. If any person utters a slander concerning such a one *viz.* by declaring defects in her, such as the diseases of epilepsy, pulmonary consumption, and the like complaints of long standing, and of a bad type, even if they be (*i.e.*) existing (in her); or of having had mixed intercourse, and thus slander her saying 'She is not a maiden', such a one shall be compelled to pay a hundred. Mṭhyābhīśamsane *tu*, for a false accusation however, *i.e.* for declaring defects in her, which (in fact) did not exist, he shall be compelled to pay two hundred. For connexion with beasts excepting a cow, he should be compelled to pay a hundred. He, moreover, who has connexion with a *bisām striyam*, *low woman*, *i.e.* a woman who has intercourse with low people—and since there is no particularisation, whether she be willing or unwilling;—or one who has connexion with a cow, such a one shall be punished with the middlemost amercement.

## Śūlapāṇi

## Yājñavalkya, Verse 289

- On an occasion of a marriage of a woman one maintaining an existing defect should be compelled to pay a hundred. For a mention of a non-existing one he shall be compelled to pay ten hundred (289).

The Author mentions a penalty for having intercourse with a common woman

### Yājñavalkya, Verse 290

In (the case of) women who are protected (slaves of another), and likewise (of) kept mistresses, even though intercourse with them is permissible, a man shall be compelled to pay a fine of fifty *panas* 5

Mitākṣharā — 'One who has connexion', this has to be understood. The women of the *varnas* already<sup>1</sup> described are (considered as) slaves, these very women are prohibited by the master from intercourse with other men with an injunction to stay at home with the object of avoiding any lapse of service, these are known as *Avaruddhā*<sup>2</sup> or *protected slaves*. Women restricted in the matter of sexual intercourse to a certain person are known as *Bhuyishyā* or, *kept mistresses*. When female slaves are *Avaruddhā Bhuyishyā* then in their case—likewise by the use of the particle *cha*, 'and,' harlots wanton women, common women and *Bhuyishyā* are also included, in their case also—*gamyāsvapi although intercourse with them is permissible*, as they are equally available to all males one having connexion with them shall be fined fifty *panas*, since they are as good as other's wives as they have been patronised by another. This has moreover, been clearly stated by Nārada<sup>3</sup> "A wanton woman one not a Brāhmaṇa, a prostitute or a female slave intercourse with these women is permissible when they belong to a lower order, but not in a higher order (78). When however, any one of these is a kept mistress of another the offence is

PAGE 154 \* 'equal to that of connexion with another's wife' 25

'One must not approach these though intercourse with them is permissible as they are patronized by another' (79) .

Indeed 'it is not correct to say that wanton women and the like others being common women intercourse with them is permissible. The type called 'common women' are not met with in this world either as forming any separate caste or mentioned in any *Sāstra*. For the wanton women as even the female slaves are after all women of

1 See Ch XIV

2 See Nigubāṭa vs *Maṅghikā* 47 Bom 401

A kept mistress whose husband is alive is not an *avaruddhā* etc. *śāradā* vs *Chandrabāṭa* 48 Bom 203

3 Ch XII 78-79

4 From here commences the objection that the statement that the women referred to here are approachable by all is not proper. And for this purpose, the objector takes all the cases and examines them viz (1) of the married women who have fallen off, (2) of the maidens and (3) of prostitutes

{some} *varna* vide the text of Manu<sup>1</sup> "That woman who abandons  
 "her (own) husband and goes to another man of her own *varna* out  
 "of love (for him) is called a *Saurmā* or a wanton woman, slavery  
 "is ordained in the descending order of the *varnas* and not in the  
 5 "reverse order" And in the case of women having a *varna* it is not  
 possible for connexion with another man when the husband is living,  
 or even when he is dead. Since a prohibition has been ordained in the  
 text<sup>2</sup> "Though destitute of virtue, or seeking pleasure (elsewhere),  
 "or devoid of good qualities, (yet) a husband must be constantly  
 10 "worshipped as a god by a faithful wife (154) At her pleasure, let  
 "her emaciate her body by (living on pure) flowers, roots and fruit,  
 "but she must never even mention the name of another man after the  
 "death of her husband (157)"

Nor even can a woman be a common woman in her maiden  
 15 condition For a gift is ordained only in the case of a maiden who  
 has been under the guardianship of her father or any other relation.  
 And even in the absence of a giver, it is only one of such a descript-  
 ion regarding whom a choice by herself has been ordained Nor,  
 moreover, can there be a deprivation of the privilege of one's *Dharma*  
 20 (merely) on account of a condition of slavery Slavery means only  
 dependence, not apostasy from one's own religion.

Nor, even a prostitute is a common woman, since<sup>3</sup> there is no  
 caste where an intercourse is permissible excepting with such as have  
 sprung from the (union with the women of) lower orders And if  
 25 she falls within (one of) these, then a connexion is not permissible  
 as has been mentioned before If (it be that) they are sprung from a  
*Pratiloma* union, then certainly they are much more not approachable.

Therefore on account of the degradation incurred by these  
 women by coupling with another man, and by a further repetition of  
 30 a censured act, as also by reason of the rule of prohibition against

1 Not found in the published edition of Manu Of Narada Ch XII 49

2 Of Manu Ch V 154 and 157

3 Here, three cases are possible A prostitute may either belong to a  
 caste (1) other than that sprung from an *Anuloma* connexion of the *Varṇas*, or  
 (2) which has sprung from such a connexion, or (3) which originated in a  
*Pratiloma* connexion of the *Varṇas*, and the Author examines each case See  
 Sebodhant p 108 ff 24-27 and Balamhathi p 310

an intercourse with one who has fallen, these women are not fit to be approached by all men<sup>1</sup>

[ The answer is ] This is true But here, there being an (absolute) absence of a visible obstruction *e g* the fear of the father or other guardian, or of the Royal sanction, the use of the language<sup>2</sup> that 'a connexion with them is permissible' is proper And also by the text<sup>3</sup> 'In the case of protected female slaves or kept mistresses &c' the punishment being confined to a particular case *etc* of a woman who has resorted to one particular man when that condition does not exist in absence of punishment is necessarily inferred And again in the case of wanton women and others there is an absence of punishment, since no rule has been ordained; and also an inference may be drawn from what is indicated in the text<sup>4</sup> 'He should not cause anything to be paid by a maiden who approaches a man of a higher caste'<sup>5</sup>

An expiation<sup>6</sup>, however, on account of falling off from one's own religion has been ordained equally for the women who are approached, as also for the men who have connexion

As for the inclusion of prostitutes among the *Varnas*, which has been maintained above as an inference from the fact that there is no separate caste for them on the argument<sup>7</sup> that prostitutes are human beings and must therefore be included as falling within any of the *Varnas* or

1 Here ends the objection and the Answer commences next

2 Of Yājñavalkya II 290

3 This passage has been referred to in two recent cases:—in *Chandulal vs Surayam* 30 Bom 434 at p 440 where Chandavarkar J discusses it and in *Hiralal Singh vs Tripura Charan Poy* 40 Cal 650 (F B) at p 663, where after quoting Dayabhaga Ch IV Sect III § 37, Mookerjee J observes as follows

'The language used in this passage does not restrict its application to the *stridhana* property of a respectable woman only, the language is comprehensive enough to include *stridhana* property of a prostitute who does not by the mere fact of lapse into prostitution cease to be a Hindu or to be subject to the rules of Hindu Law', and Yājñavalkya II 290 and the Mitāksharā thereon has been relied upon

4 of Manu Ch VIII 365

5 See Prayascittadhyaya p 287 II 7-8 also *Chandulal vs Surayam* 30 Bom 433 at p 440

6 The full syllogism would stand thus

All human beings must belong to some *Varna* or caste

The *Pāyās* are human beings The *Pāyās* belong to a *Varna* or a caste

*Ānūloma* castes, as is the case with a Brāhmana, that is not correct. These castes, *e g* *Krīda*<sup>1</sup>, *Golala* and the like, are unending. Therefore the inference must be drawn that a caste known as *Vesya* being well known in the world similarly as that of a Brāhmana and the others is of an old origin, having sprung from a connection with a *Vesya* female with a man of her own caste or of a superior one, and deriving maintenance from having sexual intercourse with men. Nor is this tradition without a basis. It has indeed been recorded in the *Skandapurāṇa*<sup>2</sup> thus: "There are certain *Apsarasas* called *Pancha-śūdrā*; their progeny is known as the *Vesya* and is regarded as a fifth "caste." Therefore as there is no rule for them to marry and remain

1 There are defined in *Manu* Ch III 174 "They are sons begotten on another man's wife, when born during the husband's life time, the son is called a *Ānūloma*, and when born after his death, he is known as a *Golala*."

2 The passage in full has been given in the note on pp 154-155 of the Sanskrit text. It details the account of the origin of the *Vesyaś*, describes their five-fold divisions, the characteristics of each, and the general rules governing the class.

The following is the translation of the passage:

"The caste known as the *Vesya* has been known from long before, O *Dvijaś*! Born of (an intercourse between persons of) the same caste or of different castes, and earning its livelihood from sexual intercourse with males (1)

"Conscious known as *Pāñchachūdās* lived of old in the City of the Gods. Once upon a time they performed a singing dance in the presence of the Lord of the Gods (2)

"The sage *Durvasa*, the best of the sages, learned, fiery and endowed with a portion of the God *Siva* in him, being pleased with their dance and singing, ejaculated 'Excellent!' (3)

"He shouted loudly often and often 'excellent!', being full of delight. Seeing this wonderful sight, the women viciously laughed loudly (4) (and exclaimed) 'Does this ruler of the Vedas appreciate our skill in singing!'"

Thus seeing from the signs that he was being insulted, the sage became excited with anger (5) and delivered a curse thus: "Hence to the region of Earth! You do not deserve to be among the Gods."

\* 1AOF 100

"Then being full of fright, the *Apsarasas* began to cry in humility (6)

"They respectfully begged: "Oh protector of the humble, save us" (7). Thereupon the anger of the angry sage vanished, and he delivered the cancellation of his curse in the presence of the God *Sakra* thus: "There shall arise a fifth caste from these, from (people of) the four *Varṇas*, and then the redemption of these will take place, and never otherwise, oh Never aging ones!" (9).

(Continued on next page)

fixed to one man, in having connexion with a male of an equal or superior class there is no sin implied, nor (is any) penalty (incurred)

by men having access to them when these are not under the protection of any one. Although

there is no penalty, still invisible sin is verily

incurred since the rule is that 'a man should always restrict himself "to his wife", as also an expiation has been ordained in the text

'For having intercourse with brutes or prostitutes, the *Prayāpatya* expiation is ordained

### Śūlapāni

Yājñavalkya Verse 290

For having intercourse with the undefflowered protected female slaves of others, and also for intercourse with the protected women with their consent, likewise one having intercourse with women of the lower orders although approachable should be compelled to pay a penalty of fifty pānas (290)

(Continued from last page)

"Those women too having come down upon the region of the Earth, and being wanton and addicted to sensualities, with great delight did service to the mates of the twice-born *Varnas* (10)

"The progeny begotten from these is known as the *Vēlyā*, I shall describe their five-fold distinctions according to their qualifications (11)

"The *Vesyas* are known as *Kalavati*; *Rambha*, *Nayika*, *Ulekhalā*. Among *Vesyas* the *Nayika* is known by her beauty, and is celebrated for the splendour of her dress' (12)

"*Kalavati* is versed in amorous intercourse and is one who has worked for the art of singing and *Rambha* is known to be an adept in matters of beauty, art and dress (13)

'That woman who always has intercourse with two, three or six men, and who is absolutely wanting in art or beauty is known as *Ulekhalā* (14)

'That woman who abandons her own husband and goes to another man of her own *Varna* out of love (for him) is called a *Sacurā*, slavery is ordained in the descending order of the *Varnas* and not in the ascending order (15)

"Restrained in speech and restricting herself to intercourse with a man of a higher tribe, she is regarded as a *Dharmapatni*, and is considered as a *Pativrātā* even among harlots (16)

"She, who having once accepted a fee from one man does not desire another who offers one or many rupees, or one who offers the (sovereignty) over the three worlds or even *Indra* (17)

'Such a one even though a *Vēlyā* is to be regarded a virtuous and chaste woman, and is respected as a lawfully married wife (18)'



By the text<sup>1</sup> "In the case of protected female slaves," while prescribing a punishment for a connexion with a kept mistress, such as a female slave, a wanton woman and the like, it comes to be inferentially laid down that there is no penalty when these are not in the keeping of any one. So the Author mentions an exception to this

5 Yājñavalkya, Verse 291

For forcible intercourse with a *Das*, the fine is declared to be ten *panas*. For several (having intercourse) if she is unwilling twenty-four for each separately

10 Mitāksharā — For a man having *prasahya*, *forcible*, i. e. compulsory intercourse, and without the payment of her fee, with a woman of the class who maintain themselves by sexual connexion with men, e. g. a female slave, a wanton woman or the like, the fine is ten *panas*. If several men have intercourse by force with one single woman even

15 when she was unwilling, then each shall be punished with a fine of twenty four *panas*, separately. If however after paying the fee as desired by her, they afterwards have connexion with her by force, even when she was unwilling then there is no guilt of theirs provided there is no appearance of a disease in her, since Narada<sup>2</sup> has laid down 'A

20 'female slave who does not go when called upon, shall not be punished, 'if she was diseased or exhausted, or engaged or was doing the service of the king''

#### Sulapant

#### Yājñavalkya Verse 291

25 For a forcible intercourse with a slave ten *panas*. For many having intercourse with her when unwilling the penalty for each is twenty four *panas* (291)

#### Yājñavalkya Verse 292

30 A prostitute who has received her wages shall if unwilling pay double, under similar circumstances the man also shall be compelled to pay an equal amount if none is received

Mitāksharā — When after accepting her fee and even when in good health she is not willing for the owner of the money then she shall pay twice the amount of the fee. Similarly if a man who having paid the fee,

35 is himself unwilling, he shall indeed forfeit the amount (paid by him),

<sup>1</sup> Yājñ II 250

<sup>2</sup> Not found in the published edition of Narada

for the same Sage<sup>1</sup> has said: "If a public woman declines to receive a man  
 "after having received her fee, she shall pay twice the amount (of the fee).  
 "If the man be unwilling, he shall forfeit the amount, even if he had  
 "paid the wages." Similarly another special rule also has been stated  
 by the same Sage<sup>2</sup>: "The same (fine shall be imposed) on a man 5  
 "who does not pay the (stipulated) fee, after having had connexion  
 "with a woman (of this description) (18); or who had forcible con-  
 "nexion and who has thus caused scars by the hand, teeth, or nails.  
 "Should a man have connexion with her in an improper part, or  
 "cause her to be approached by many, he must pay eight times the 10  
 "amount of her fee, and a penalty in an equal amount (19). Women  
 "who are prominent among *Veśyās*, who are adepts in matters of  
 "sexual intercourse, and who are residents of the houses there, shall  
 "declare a decision in case of any doubt, in disputes arising therefrom."

### Yājñavalkya, Verse 293

15

For a man having intercourse with a woman in an improper part, as  
 also with a man, or for passing urine, the fine shall be twenty-four *paṇas*,  
 as also for having intercourse with a female ascetic.

Mitākṣharā:—Moreover, he who has sexual connexion with one's  
 own wife in the mouth or any such other part, or discharges the urine 20  
 or excretion in the mouth of a male; or likewise has intercourse with  
 a female ascetic shall be fined twenty-four *paṇas*.

### Sūtapāṇi

#### Yājñavalkya, Verse 293

For one having intercourse in the lower parts other than the female 25  
 organ, twenty-four For having intercourse with a male or sexually  
 approaching a woman who has entered the fourth order, the penalty is  
 twenty-four *paṇas* (293).

## Yājñavalkya, Verse 294

For having connexion with an *Antyâ* woman he shall be branded with an obscene mark, and banished. If a *Śūdra* has a like intercourse he himself becomes an *Antyâ*. For an *Antyâ* having intercourse with an *Arya* woman, (death is the punishment)

Mitaksharâ — An *Antyâ* woman is a female of a *Chândāla*. For having connexion with her, members of the three *Varnas* who are not ready to perform an expiation, shall be fined a thousand *panas* according to the rule of *Manu* <sup>1</sup> and a thousand for an *Antyâ* woman, <sup>2</sup> and then *kubandhena ankyâh*, shall be branded with an obscene mark, i. e. indecent mark e. g. the mark of the female organ, and the king should banish them from his kingdom. For one, however, who is ready for an expiation, fine alone (shall be the punishment). A *Śūdra*, moreover, having connexion with a *Chândāla* woman, himself becomes an *Antyâ* or *Chândāla*. For one, however, born of an *Antyâ* e. g. a *Chândāla* or the like other, death alone (is the punishment) for having connexion with a woman of a higher class.

Thus ends the Chapter on Intercourse with Women

## Viramitrodaya

The Author mentions penalties for adultery proper (as are) on the several occasions

## Yājñavalkya Verse 286-94

For having intercourse with an unwilling wife of another of the same *varna* and under his protection, the penalty is the highest amercement, and for intercourse, however, with the father's sister etc. the penalty is death only as the Author will state in the third book, as says *Manu* <sup>3</sup> "A *Brâhmana* shall be fined a thousand for an intercourse with "a guarded *viprâ* woman against her will, he shall be fined five hundred "when he had connection with one who was willing. Here, for intercourse with a woman of Another *varna* of a lower order the punishment is the middling amercement. In this connection *Manu* <sup>4</sup> states a special rule. "A *Brâhmana* having intercourse with "an unprotected *Kshatriyâ* or *Vaisyâ* woman or with a *Śūdrâ* woman "shall be punished with five hundred with a woman born of the lowest "class, however, a thousand. A thousand shall a *Brâhmana* be compelled

"to pay for having intercourse with one protected in a house. For a  
"Kshatriya or a Vaisya the same shall be the penalty with reference to  
"a Sudra woman. By the expression *pratipanya*, 'in the inverse order',  
it is intended that the males of the Sudra etc. shall be capitally  
punished for having intercourse with a Vaisya woman, and for a woman  
of a lower order the punishment shall be the lopping off of the ear and the nose. This is the meaning. This, moreover, has a reference  
to a woman under protection. That says *Manu*<sup>1</sup> "The same too  
"however, for having intercourse with a Brāhman woman under  
"protection shall be punished like a Sudra, or be burnt in a hay-fire.

"If, however, a Vaisya or a Kshatriya have intercourse with an  
"unprotected Brāhman, the Vaisya shall be made to pay five hundred,  
"and the Kshatriya one thousand. For a woman having voluntary  
intercourse with a man of the same *varṇa* or one of a lower order, a  
punishment shall be administered. For one, however, who has been  
enjoyed by a man, there shall be no punishment, *vide* the following text  
of *Matsyapurāṇa*. "He, however, who violates in any way another's  
"wife by force, for such a one, the punishment shall be corporeal  
"chastisement. Of the woman, however, there shall be no offence.

*Manu*<sup>2</sup> "If a Vaisya has intercourse with an unprotected Kshatriya  
"woman, or a Kshatriya with a Vaisya woman, these two shall deserve  
"the punishment the same as for one having intercourse with an un-  
"protected Brāhman woman. *Gautama*<sup>3</sup> in connection with the punish-  
ment for a Sudra says "For an intercourse with an Arya woman, cutting  
"off of the male organ and deprivation of the entire property, and if she  
"would be one under protection the additional punishment of death.  
*Baudhiyana*<sup>4</sup> states the procedure for (the punishment of) death. "One  
"should burn a Sudra with a hay fire. *Itārta* "For one having violated  
"the bed of one of a superior order the king shall have him tied and  
"devoured by dogs and shall have him burnt with faggots. *Yama* "If a  
"Brāhman woman infatuated by passion has recourse to a Sudra such a  
"one the king shall punish to be devoured by dogs at the place of the  
"executions. When a Brāhman woman has recourse to a Vaisya or a  
"Kshatriya, there shall be a shaving of her head and she shall be paraded  
"on a donkey. *Bṛhaspati*<sup>5</sup> "Where a woman comes to a man's house  
"and excites his concupiscence by touching him or the like acts, she

1 Ch VIII 377-78

2 Ch VIII 283

3 Ch XII 2-3

4 Ch II 253

5 Ch XXIV 15-16

"shall be punished, half her punishment shall be inflicted upon the man. Her nose, lips, and ears having been cut off, she shall be paraded in the streets and plunged into water, or she shall be got devoured by dogs in a public place frequented by many persons (286)

- 5 *Alankṛtām*, 'bedecked with ornaments' i. e. bedecked with ornaments for ( the purpose of ) nuptials, a maiden from among those of the same *varṇa* : i. e. a maiden of the same *varṇa*, for one kidnapping such a one for sexual intercourse when she is unwilling, the highest amercement, otherwise : i. e. when she is not bedecked with ornaments for  
10 nuptials, one kidnapping a maiden of the same *varṇa*, should pay as the penalty the first amercement. In the case of an inverse order : i. e. for a member of a lower order kidnapping the maiden of a higher order death has been laid down for the kidnapper (287)

- In the case of maidens of lower orders who are willing and are  
15 kidnapped the fault of the kidnapper shall not be such as to deserve a punishment otherwise, however, i. e. when she is not willing, there shall be punishment for the kidnapper. As says Nārada " For a member of "the same *varṇa*, for a transgression against a maiden of the same *varṇa* "with a passion, but, however, that one should adorn her with ornaments,  
20 "and after having duly honoured her he should marry her. In the case of one who was unwilling and who has been kidnapped Sankha says "One equal (in *varṇa*) should be resorted to after giving her the money "price, ornaments and *stridhana* in duplicate. 'For defiling etc.' For defiling a maiden by inserting a finger in the secret part of one who was  
25 unwilling, whether of the same or lower *varṇa*, the lopping off of the hands of the defiler should be made. In the case of one of a higher order, for causing the defilement, capital punishment has been stated. Here the option stated by Manu<sup>1</sup> is admissible. 'That man who through arrogance "forcibly contaminates a maiden, two of his fingers shall be instantly cut  
30 "off, and he shall pay a fine of six hundred *panas*' (A punishment) exceeding six hundred being equal to the cutting of three fingers. Here Manu<sup>1</sup> "A man of equal caste who defiles a willing maiden shall not "suffer the amputation of the fingers, but shall pay a fine of two hundred with a view to prevent a repetition of the act (369)

- 35 "A damsel who herself pollutes another damsel shall be fined two "hundred *panas*, pay double the *sulka* and receive ten lashes with a rod (370)

1 The Benares edition reads *अपराध* shall be subjected to pains.

2 Ch XII 72

3 Ch VIII 368

4 Ch VIII 369-71

"But a woman who pollutes a damsel shall instantly have her head shaved and two fingers cut, and also be paraded over a donkey" (371).

'Pollutes' i. e. defiles by inserting her fingers; 'woman' i. e. a young woman (288).

The Author mentions a penalty for other kinds of defilement by the verse 'A hundred for defiling a woman etc.' Here by the word woman is expressed by regard to the context, a maiden, of her, for a slander by any one, other than the bridegroom, with the allegation of her being affected with epilepsy, although existing, or a similar disease, such a one shall pay one hundred *panas* as the penalty. If, however, he makes an allegation as to epilepsy etc which as a fact does not exist, then he shall pay a fine of two hundred *panas*. For a bridegroom, however, for making a false allegation, a penalty has been stated in the first book<sup>1</sup> under the text: "Who falsely blames (a girl shall be punished with) a hundred." For pointing out a fault (which exist) as a fact, however, there is no offence for a bridegroom.

'Beasts' i. e. beasts others than cows, such as a sheep and the like. For connection with a woman of a lower order, such as a Sūdṛā woman or a cow, he shall be made to pay the middle amercement. By the use of the word *cha* is cumulated what is established by the text of Manu cited before viz. "For intercourse with a Kṣatriyā or a Vasyā woman under "protection one shall be compelled to pay the highest amercement" (289).

The Author mentions an exception to the text stated before (269) viz. 'A woman of a lower order etc.' A female slave not taken over or marriagable by a particular person is of three varieties. One who has been prevented from intercourse with any other man but has been reserved for his own enjoyment is a kept mistress as also a prostitute. A kept mistress, however, shall not be available for sexual intercourse by any person other than himself, one who would do service to self. In the case of these three enumerated, with the first and the last, even though intercourse with them is restricted to a particular man, any other man having intercourse shall pay a penalty of fifty *panas* (290)

And for an intercourse with force with a female slave or with a prostitute the penalty is ten *panas*. When a prostitute who is unwilling has been subjected to the intercourse of many men without break, then the penalty for each is twenty four *panas*. Thus, therefore, for inter-



the mouth or the waist having intercourse by penetration, the penalty is twenty-four *panas*. By the use of the word *apī* the Author adds an enhanced punishment than that mentioned before in the case of those who are approachable (293).

The *anyā* woman, i. e. a *Chāṇḍālī* woman having intercourse with a member of the first three orders should be branded with an obscene mark i. e. an indescant mark i. e. the mark of the female organ, and should be banished from the territory. A *Śūdra*, however, having intercourse with an *anyā* woman should only be branded similarly with the mark of the female organ, but should not be banished. For a member of the *anyā* tribe having intercourse with an *Ārya* woman the punishment (is) death (294).

Thus ends the Chapter on Adultery with Women

### Śūlapāṇi

#### Yājñavalkya, Verse 294

One who is born in the lowest is the lowest below which there is no lower grade of a *Śūdra* caste; for having intercourse with such a one i. e. with a *Chāṇḍālī*, he should be branded with a mark of a headless corpse and should be expelled. A *Śūdra*, however, should simply be branded as above. He should neither be expelled nor punished. For having intercourse with an unprotected twice-born woman, death alone is for a *Śūdra* (294).

In the book on *Vyavahāra*, another Title of Law viz. 'The mutual relations of men and women' has been propounded by *Mānu* and *Nārada*. There *Nārada* says: "That title of law in which the legal rules for women and men also regarding marriage and such other relations are stated is called 'the Mutual Relations of Women and men.'" *Mānu* also says: "Day and night, women must be kept in dependence by their own males, and if they attach themselves to sensual enjoyment, they must be kept under one's control."

Although a suit mutually between the husband and wife as plaintiff and defendant in the king's court is prohibited, still when transgression of their mutual duties has been mentioned directly or by hearsay, the couple should be restored to the right path by the king by a fine or the like (penalty); otherwise he becomes blameworthy. This is the precept laid down for a king in connection with the duties of Husband and wife, in the Chapter called 'the Duties of a King' in the book on *Vyavahāra*. This, moreover, has already been discussed in detail in the chapter on Marriage, and so has not again been mentioned by the Lord of the Yogis.



## CHAPTER XXV

Miscellaneous Disputes (*Prākīrṇa*)

- Now is being commenced the title of Law called Miscellaneous. Its nature has been stated by Nārada<sup>1</sup>. Under the head of Miscellaneous (Disputes) are comprised Law Suits depending on the king (such as) transgression of the King's Commandments, as also obedience towards his injunctions (1). Grants of towns, the divisions of the constituent elements of a state, the duties and their opposite of *Pūlhandis*,<sup>2</sup> *Naigamas*, *S'ras* and *Ganas* (2). Disputes, likewise, between father and son, neglect of (prescribed) penances, abstraction of gifts (made to worthy persons) and also the wrath of the anchorites (3). Sinful confusion of castes, the rules regarding their means of subsistence, and (in short) whatever has not been noticed in the preceding titles of law, all that shall come under (the title called) Miscellaneous (4).

- In the Title of Law called the Miscellaneous, such disputes as have a reference to the transgression or the obedience of the king's commands, are closely connected with the king. In such cases the king himself must assume the role of a contending party against such persons as act 'in violation of the (laws of) *Śruti* and usage', and decide the suit. By saying this, the definition necessarily comes to be laid thus "That suit wherein the king is a party is called *Prākīrṇa* or Miscellaneous".

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- There the Author mentions a particular penalty for a particular offence.

- Yājñavalkya Verse 295

- He who either omits or adds anything by writing in the king's edict or allows an adulterer or a thief to escape, shall suffer the highest amercement.

- Mitāksharâ—He who writes *rājasāsanam* the king's edict, by exhibiting either less or more area of the land granted by the king, he also who after apprehending an adulterer or a thief, lets him off without making him over to the king, both these shall be punished with the highest amercement.

1 Ch XVII 1-4

2 All these terms have been explained before. See p. 1270 and notes 1 & 2

3 This is the definition of the *Prākīrṇa*, and the description of it given by Nārada above as also the enumeration of titles which may be included therein. It is clear that it includes those kinds of disputes where the State is a party, i. e. Disputes of a Public character. Cf. The Public Law of the Roman Jurisprudence

**Viramitrodaya**

Nārada has defined<sup>1</sup> the title of law called 'Relations between men and women' "Where the ritual of marriage of women and men is, described, that title of law is called 'Relation between men and women' This chapter having been in terms already dealt with by the chapter on marriage, the Author passes it over and begins by an entire chapter the title of law known as Miscellaneous and characterized by Nārada<sup>2</sup> as follows (same as Mitakshara on p 1364 lines 4-15)

**Yājñavalkya Verse 295**

One who writes by either omission or addition an order commanded by the king for him, as also for one who lets go an adulterer or a thief, the penalty is the highest amercement. By the first use of the word *api* is included an adverse implication, and by the second use (an addition in) the writing

**Sūtapanti**

**Yājñavalkya Verse 295**

He who omits from or adds in writing to the order of the King for him, and for one who has sexual intercourse with others' wives, as also for one who lets a thief off the penalty is the highest amercement (295)

As incidentally occurring in the context the Author mentions a penalty also in cases other than those which depend on the king

**Yājñavalkya, Verse 296**

For defiling a *Druya* with an uneatable thing the punishment shall be the highest amercement, a Kshatriya the middlemost, a Vaisya, the lowest, and a Śūdra half of the lowest amercement (shall be the punishment)

Mitaksharā — Dushayitwa for defiling a Brahman i.e. making him eat an uneatable thing abhaksbyena i.e. the urine, feces &c. or any such thing mixed with food or drink a man becomes liable to be punished with the highest amercement for similarly defiling a Kshatriya, however, the middlemost (amercement), for defiling a Vaisya, the lowest or first (amercement) and for defiling a Śūdra he becomes punishable with half the first amercement. This is the connection. For defiling with garlic or other similar uneatable things a greater or less punishment should be determined by regard to the greater or less magnitude of the offence

## Vīramitrodaya

## Yājñavalkya, Verse 296

- For one accusing a Brāhmana with having eaten an uneatable thing such as fish etc. the highest amercement, for accusing a Kshatriya, the middle amercement, for accusing a Vaiśya the first amercement, for  
5 accusing a Śūdra half of the first amercement, shall be the penalty (296).

## Śālapāṇi

## Yājñavalkya, Verse 296

- For polluting a Brāhmana with non-estables such as the fish etc. the  
10 punishment is the highest amercement; the rest is clear.

As for the higher punishment mentioned by Viṣṇu: "One polluting a Brāhmana with an uneatable shall be punished with ten gold coins", that has a reference to serious (allegations) e. g. about eating garlic and such other uneatables (296)

## Yājñavalkya, Verse 297

He who deals in false gold, also one who sells unclean meat, shall be maimed and also compelled to pay the fine or the highest amercement.

- Mātākṣarâ:—Moreover, a goldsmith or other dealer in gold who palms off false gold prepared by the addition of lustre (to a base metal) by chemical processes, and a butcher or other dealer in flesh, who habitually sells unclean meat e. g. the flesh of a dog or other like animal—and by the use of the word *cha*, 'also', also one who  
20 palms off imitation silver or other metal (as good metal)—all these shall be (maimed by being) deprived of the three organs viz. the nose, the ears, and the hands. By the use of the word *cha*, 'and also',—shall also be compelled to pay the fine of the highest amercement, which comes to be inferred from (the use of) the (expression) cutting off of the organs. As for the punishment mentioned by Manu:  
25 "But the king shall cause a goldsmith who behaves dishonestly, the most noxious of all the thorns, to be cut to pieces by razors", that has a reference to the gold of a Deity, a Brāhmana or the King.

**Vīramitrodāya**

**Vājñavalkya, Verse 297**

A goldsmith or the like dealing falsely and in similar manner *Kṛtāñ*, 'in false', i. e. counterfeit gold creating an appearance of gold; a butcher or the like habitually selling unclean i. e. bad meat, such as the flesh of dogs etc., should be deprived of three organs viz. the nose, the ear, and the hand and should be compelled to pay the highest amercement. By the first use of the word *cha* is included the banishment etc. of a Brāhmaṇa who is undeserving of a corporal punishment; by the second use the Author intends the prescribing of a cumulative punishment. By the word *tu*, 'however', the Author excludes other cases such as those which have a reference to the gold of the gods or of the Brāhmaṇa as per the following text: 'A king should hack to pieces with edged weapons a goldsmith set on unjust dealings as the basest of the offenders of all sinners and the greatest thorn' (297).

**Śūlapāṇi**

**Vājñavalkya, Verse 297**

One who deals in counterfeit gold by putting on a colourable resemblance, those who sell prohibited meat by describing it as goat meat or the like allowed by law should be deprived of the three organs i. e. the nose, ear, and hands (297).

**Vājñavalkya, Verse 298**

For any injury caused by a quadruped, when the keeper was crying loudly 'Be away', there shall be no blame; similarly for like injuries caused by wood, earth, stone, arm, or a yoked beast.

**Mītākṣharā:**—For the offence of killing a man or the like committed by a quadruped, such as a bull, an elephant, or like animals, the blame shall not accrue to the owner of the bull or any other animal when he was loudly crying 'Be away.' Similarly, for an injury likewise caused by the throwing of a club, a clod of earth, an arrow, or a stone, by means of the arms, or by a yoked beast i. e. by a horse or the like while carrying a yoke, no blame shall accrue to the thrower of the wood &c. when he was crying 'Be away.' The object in stating that there is no offence in any injury caused by throwing a wood &c., is to indicate that there is no penalty for such injury. However, the penance for doing anything even unintentionally does verily exist. By the use of the words wood &c. the missiles of Śakti, *Tamara* and the like are also included.

## Śūlapāni

## Yājñavalkya Verse 298

- On an attack by a bull or like animals one who previously shouts loudly Be away, for such a one there is no fault which can deserve punishment. So also in the case of one practising at clubs or lumps of earth who before shouts out with the words Be away there is no fault (298)

## Yājñavalkya, Verse 299

- In the case of injuries caused by a conveyance owing to the nose string having been snapped or the yoke and the like having been broken or by a rear motion (of the animals) the owner shall not be blamed

- Mitāksharā — Moreover, the string which is used in the nostril is (called) the nose string, that cart or other conveyance where the nose string of a bullock yoked to the cart has given way is a *chhama nasya* conveyance, similarly (in the case of an injury caused) by a conveyance where the yoke has given way. By the use of the term *Ādi* 'and the like' where the axle or the wheels or any other part is broken by the vehicle moving rearwards & backwards, and by the use of the word *ēva* 'also', by going crookedly or coming in front. For an injury caused to men or others, the owner or the driver, *adoshabhāk* shall not be blamed since the injury was caused by no action on his part. So also Manu (says) 'When the nose string is snapped when the yoke is broken when the vehicle turns sideways or back, or when the axle of a conveyance is broken, and similarly when a wheel is broken (291) When the leather thongs and similarly the rope round the neck or bridle are broken and when the driver was crying 'Be away, Manu has declared that in such cases there shall be no punishment

## Śūlapāni

## Yājñavalkya Verse 299

- That which is placed on the nose is *nasya*. When one is injured by a conveyance carried by bullocks whose nose-strings are snapped so also by a cart with its yoking pin broken. By the use of the word *ādi* 'et cetera', are included the wheel and the like. By such (conveyance) while riding back if any injury is done the owner does not incur any blame (299)

The Author mentions a punishment for the owner in case of neglect  
Yājñavalkya, Verse 300

The owner of an animal possessed of tusks or horns, who although having the power, still fails to relieve, shall pay the lowest amercement, and a double, if the sufferer cried for help

Mitākṣharā—While a man is being injured by animals *daṁṣṭribhīḥ*, possessed of tusks, such as an elephant &c *śṛṅgabhīḥ* or of horns, such as bullocks &c, who are driven by an inexperienced driver, and the owner although he was competent does not relieve them, and then neglects them, then he shall pay the lowest amercement for having engaged an unskilled driver. When however, he does not relieve even when the sufferer cried "Oh I am (being) killed," then a double (fine shall be paid)

When, however, he engages a competent driver, then the driver alone shall be punished, and not the owner, as says Manu: "If the driver be skilful, he alone shall be fined." Moreover, special punishments shall be determined by regard to particular animals (concerned) as says Manu: "If a man is killed, the guilt will be at once the same as (that of) a thief; for large animals such as cows, elephants, camels or horses, half of that (296). For injuring small cattle, the fine (shall be) two hundred *panas*, the fine for beautiful wild quadrupeds and birds shall amount to fifty (*panas*) (297). For donkeys, sheep, and goats the fine shall be five *māśas*, and the punishment for killing a dog or a pig shall be one *māśa* (298)"

#### Vīramitrodaya

Yājñavalkya, Verses 298-300

When the owner of a quadruped loudly warns people with the words "Be away, be away," and any man is killed by an elephant, a bull, or the like, such owner is not guilty of any offence, similarly does not an offence occur on the part of one warning people with the words "be away" for any injury caused by wood etc stored in a cart, and also by others apart away from it (298)

So also the owner of a cart or any other vehicle is not guilty on account of any injury caused by the backward or forward movement of the vehicle due to the nose string having been snapped or the yoke or the yoke pin being broken (299)

- If one who is competent does not offer relief to one who is being injured by a horned beast such as the cow, or a tusked one, such as the elephant etc. such a one should be punished with the first amercement. Similarly when a loud cry is raised and he does not give relief, he should be given double the punishment. *Yugyam*, 'conveyance', i. e. that which is yoked; and the yoke i. e. the wood of the yoke. By the first use of the word *tathā*, 'also', is included the snapping stated by it, and by the second use is stated the snapping without the fault of the driver, as Manu<sup>1</sup> has declared a punishment for the owner for a fault of the driver thus: "Where a conveyance goes astray on account of the fault of the driver, there the owner is liable to punishment; when injury is caused, the punishment is two hundred (*paṇas*)". In the expression 'be away', the use of the word *eva* does not exclude the tendency to kill. By the use of the word *tathā*, 'also', a third time, are included animals like the female fox etc. (300).

## Sūlapāṇi

## Yājñavalkya, Verse 300

- The owner of horned beasts such as the bull etc., as also of the animals with tusks, or tooth such as the apes etc. not offering relief, although competent, when one is attacked by these shall pay the first amercement: If the sufferer loudly cried for help such as "Take away the bull or the monkey" and if relief is not given, then he should pay double (300).

## Yājñavalkya, Verse 301

- He who charges an adulterer as a thief shall be made to pay a fine of five hundred. For him who takes money and lets him go, eight times (of) the same.

- Mitākṣharā:—Moreover, out of fear for the disrepute of one's own family, he who accosts a *jāsam*, an adulterer with another man's wife, charges him *chaura*, as a thief, and says 'Get thee gone,' *dāpyaḥ-pañcha śalam damam*, shall be made to pay five hundred as penalty i. e. that kind of fine in which are five hundred *paṇas*. He, moreover, who accepts money from the adulterer, as a bribe, and releases the adulterer, such a one shall be made to pay eight times the amount of the sum so received.

## Vīramitrodaya

## Yājñavalkya Verse 301

One accusing an adulterer as a thief out of fear of disreputation of the family, shall be made to pay a penalty of five hundred *panas*. Having accepted money payment as a bribe, one who lets go an adulterer should be made to pay a fine eight times of the amount received (301) 5

## Sūlapāni

## Yājñavalkya, Verse 301

Out of fear for a disrepute of (one's) family, one charging an adulterer with the words "Here is a thief running away" shall be punished five hundred. One accepting money and releasing an adulterer shall be compelled to pay eight times the amount (301) 10

## Yājñavalkya, Verse 302

The king should banish after cutting off his tongue, him who always imprecates evil upon the king, who calumniates him, as also he who divulges his secret counsels 15

**Mitāksharā** — Again, one imprecating evil upon the king & g inimical sentiments towards the king always; & who speaks often and often, as also one who *tasyaivakrosakārmam* calumniates him, & the king & who has a habit of defaming him, as also one who divulges & reveals to unfriendly persons *tanmantrān* his secret counsels calculated to increase the prosperity of his own kingdom, or to bring about the fall of another kingdom, the king should cut off the tongue of such a one, and banish him from his own kingdom 20

For stealing the treasury, or for a like offence, moreover, death alone (as the punishment), *vide* the text of Manu 'On those who rob the king's treasury, and those who persist in opposing (his commands) he shall inflict various kinds of corporal punishments, likewise who "conspire with the enemies" 'Various (kinds of) punishments' e.g. confiscation of the entire property, cutting off of a limb, death &c. 25 30

Even where there is confiscation of his entire property, that which is the means of his livelihood must not be attached excepting the implements of theft, as says Nārada 'The weapons of soldiers, the "beasts of burden and the like of those who maintain themselves by "conveying the goods (of others), the ornaments of public women, 35



"the various musical or other instruments of those who are proficient in these (10); And any implement<sup>1</sup> by which artificers gain their subsistence, must not be laid hold on by the king, even when he confiscates their entire property (11)"

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- 5 On account of the prohibitive text, viz "for a Brāhmana, however, there shall be no corporal punishment," the shaving of his head, and the like should be made in the place of execution, *vide* the text of Manu<sup>2</sup>. "For a Brāhmana, however, (the punishments are), the shaving of the head, the branding and banishing from the town
- 10 "viz, by branding his forehead with the mark of the crime with which he is charged, and by making him ride out on a donkey"

Viramitrodaya

Yājñavalkya, Verse 302

- One who indulging loudly in denunciations of the king i. e. one traducing the king, or one communicating his secret counsel to his enemies, should have his tongue cut off and be banished. This is the meaning
- 15

- By the first use of the word *cha* is included the (punishment of) deprivation of the entire property stated in the text of Nārada<sup>3</sup> viz "For one who deceives a king who is pursuing his own duties shall have his
- 20 "tongue cut off if his mind is not inclined at the deprivation of the property." By the second use of the word *cha* are included punishments prescribed by Manu<sup>4</sup> in the various offences in the following text "On those who rob the king's treasury, and those who persist in opposing (his commands) he shall inflict various kinds of corporal punishments, likewise on those who conspire with the enemies"
- 25

Sūlapāni

Yājñavalkya, Verse 302

- One who makes a public accusation against the king in the presence of a large number of people, one who traduces the king, as also one who discloses his secret counsel which is the basis of the stability of the kingdom, should have his tongue cut off and be banished. For a Brāhmana, however, only banishment (302)
- 30

1 Dr Jolly, edition reads शिल्पकर्मणि विनिर्माणे इति 'The tools of artisans'

2 Not found in the published editions of Manu

3 Ch XV-XVI 30

4. Ch IX, 275

### Yājñavalkya, Verse 303

For one who sells what was found on a dead body, and likewise for him who strikes his *Guru* (seniors) and (also) for him who mounts the king's conveyance or throne, the punishment is the highest amercement

Mitākṣharā — Moreover, for a vendor of what is found on the body of a dead person *e g* clothes flowers and the like, for one who strikes his *Guru* : *e* the father, the preceptor and the like, and likewise for one who without the permission of the king mounts on his conveyance *e g* the horse, the elephant and the like, as also his seat, such as the royal throne or the like the punishment is the highest amercement

### Vīramitrodaya Yājñavalkya Verse 303

For one who sells articles such as a garland etc found on a dead body, as also one who strikes a preceptor, and for him who mounts a horse belonging to the king or his throne without his permission, the penalty is the highest amercement By the use of the word *tathā*, 'also', are included those who beat their wives or sons with anything other than a rope or a bamboo stick or at a place other than the back (303)

### Śulapāṇi Yājñavalkya, Verse 303

For one who sells clothes and the like placed on a dead body, the punishment is the middle amercement, as also for one who beats a senior, or one who mounts the king's conveyance or throne (303)

### Yājñavalkya, Verse 304

For him who puts out both eyes him who predicts<sup>1</sup> evil of the king and for a *Sūdra* living as a Brahmana the punishment is eight hundred (*panas*)

Mitākṣharā — Again, he moreover, who through anger puts out the eyes of another, he also, who being a scholar in the science of astrology but who, not being the preceptor or a like other well wisher (of the king,) predicts an evil : *e* an inauspicious event about the king *e g* 'By the end of the year you will be deposed from your throne' or the like, and likewise one who being a *Sūdra*, with the object of getting a meal exhibits the sacred thread and other marks of a Brahmana (on his body), for (all) these the punishment is eight hundred (*panas*) : *e* that kind of punishment in which there are

1 *राजद्विषयम्* It may also mean "who imprecates evil" or "spreads evil report" about the king; or also, who obeys the commands of the king's enemies"

eight of a hundred *panas* For a Sūdra putting on the disguise of a Brahmana with the object of getting an anniversary meal, the punishment prescribed in another Smṛti should be observed as: "A mark resembling the sacred thread should be carved on his body by means  
5 "of a heated pin" For one wearing the sacred thread or other sign of a Brahmana for obtaining maintenance, death alone (is the punishment), vide the text "He should corporally punish those Sūdras who wear "the marks of the twice born"

## Viramitrodaya

## Yājñavalkya Verse 304

10 For one piercing the eyes of another, as also for one who performs a behest of an enemy of the king, as also for a Sūdra subsisting on alms received by wearing the emblems of a Brahmana, the punishment shall be eight hundred *panas*. This is the meaning

15 If while living as a Brahmana a Sūdra has sexual connection or the like with a Brahmana then he should certainly be put to death Vide the text of Manu<sup>1</sup> "All these the king shall punish, as also the "Sūdras who wear the marks of the twice born "For a Sūdra wearing "the garb of a Brahmana for (participating in the) *smārta* performances  
20 "such as a meal at a *śrāddha* and the like, the king should brand the "sacred thread on his body with a heated wire, the above punishment laid down in another Smṛti should also be observed The text of Manu<sup>1</sup> is: "One though born low, through avarice earns a living "by the (performance of) acts proper for the highest, such a one the  
25 "king shall deprive of all wealth and banish, has a reference to a Vaisya and a Kshatriya By the use of the word *teṭhā*, 'also', is included the case of one who predicts an evil of the king such as "at the end of the "year you will be deposed from your kingdom" (304)

## Sūlapānī

## Yājñavalkya, Verse 304

30 Those who pierce the two eyes, those who predict evil of the king, for a Sūdra also who in the garb of a Brahmana earns a livelihood, the punishment is eight hundred *panas*, as says Viṣṇu<sup>2</sup> "For striking "out both eyes of a man the king shall not release (such a one) from jail  
35 "as long as he lives, or he shall order him to be reduced to a similar state," (304).

The Author mentions a penalty for wrongly deciding a suit through anger, avarice or like other cause

Yājñavalkya, Verse 305

After, however, reviewing judicial proceedings which have been wrongly decided the assessors, together with the victorious party should be fined in twice the amount in dispute 5

Mitāksharā—Vyavahārān *judicial proceedings*, *durdṛśhān*, which are *wrongly decided*, in contravention of the Smṛti and Usage, and which on account of passion avarice or like other cause, are suspected as being improperly conceived the King should himself decide properly again, and the assessors together with the victorious party in the former trial whose guilt has been established should each be compelled to pay twice the amount of the fine which is prescribed for a defeated party in a litigation. In the text 'out of passion, avarice,' there is no rule of punishment for the (wrongful) winner; and thus there is in this verse no (fault of) repetition of the former text 10 15

When, however, a wrong decision is given in a suit on account of the fault of the witnesses, then the witnesses alone should be punished and neither the winning party nor even the assessors. When however, a wrong decision is given in consultation with the king the assessors and all others shall be punished, *vide* the text 20

One quarter (of the inquiry together with the king) goes to the offender, one quarter goes to the witness, one quarter goes to all the members of the court, (and) one quarter goes to the king. This text<sup>1</sup> moreover, is intended to demonstrate the guilt of the king and others (to) each severally and not of distributing the share of 25

1 Yājñ II 4 see p 643 B 5-8 above. The fine for the wrongful winner is not mentioned in II 4 and so this text is not open to the objection of the fault of repetition or tautology

2 of Nārada Ch III 12 see also III 11 Cf with this Manu Ch VIII 18, 19 &c

By these texts even those judges who do not deliberately give a false decision but whose decision comes to be wrong on account of their inattentiveness at the trial, are equally guilty

Medhatithi is of opinion that the guilt goes to the king if the sentence were passed by him, otherwise not

3 i.e. the text of Nārada quoted above

and not that even when the cause has been finally decided according to the rules of justice, it should be retried by a king through avarice &c

- Again, if a suit has been decided by another king, and if it be in departure from justice, even such a proceeding should be set right and decided legally after a careful investigation, *vide the text*. 'What  
5 "has been decided through ignorance<sup>2</sup> by another king, and in departure from the principles of justice, even that should be made good ' according to law, after weeding out the injustice "

### Vīramitrodaya

10

Yājñavalkya, Verse 306

- The disputant who out of suspicion as to the honest character of the first investigation regards oneself as not defeated according to law, such a one, when the other side succeeds against him again, the first party should be compelled to pay him as penalty twice the amount  
15 in dispute (306)

### Śūlapāṇi

Yājñavalkya, Verse 306

- Although defeated by a judicial decision, one who thinks that he is not defeated, such a one after he is defeated again at court shall be compelled  
20 to pay as penalty twice the amount of the former penalty. So says Nārada.<sup>1</sup> "If a man is of opinion that the suit has been decided and " punishment declared in a way contrary to justice he may have the case " tried once more provided he should pay twice the amount inflicted'. 'Decided &c completed, decision declared': &c deposed to by the witnesses

- 25 For one who when defeated destroys himself by the poison or the like Brhaspati states 'He who destroys himself by poison, hanging, or with weapon, such a one shall after death be bastinated with force, he does not deserve any rite (306)

1 The Author of this text is not known. Neither Balamhātta nor Visvesvara mention the name.

2 There is an error in the print of the text at p. 160 l. 8.

For एतं पितृं read एतं पितृं

3 Ch. I 65,

The Author indicates the devolution of wealth unjustly recovered as a fine

### Yājñavalkya, Verse 307

What has been obtained, through injustice by the king as a fine, having dedicated it to Varuna he should give it himself to the Vipras (after) increasing it thirty-fold. 5

Mitākṣharā —That fine which had been levied by the king through injustice out of avarice, should be increased thirty times, and the king should himself give the same to Brāhmanas after mentally dedicating thus "This to Varuna." And as much was taken unjustly in the form of a fine from a party so much should be repaid to him, otherwise there would be the offence of theft, and also as the fine was recovered unjustly, the right of ownership of the first owner remained unaffected 10

"This interpretation of the Dharma Sāstra is the composition of Viṣṇūśeṣvara himself, a Yogin and a disciple of the sage bearing the title of Uttama (1). 15

"Thus has been set out the commentary on the Vyavahāra Kāṇḍa of the Sage Yājñavalkya, saturated with sweet language—terse, but direct, and (at the same time) expounding the deep meaning (in it) (2) 20

'The composition called Mitākṣharā has been set out by me in language deep (in meaning) and clear (in expression), wide in import (although) terse in form (3)

"The Interpretation of the work of the Sage Yājñavalkya, thus concluded to what learned man will it not be acceptable? Though extremely concise in words it is as extensive in import, and sprinkles the immortal nectar (of learning) on the ears (4). 25

"Thus ends the Second Chapter called the Vyavahāra of the commentary called the Rju Mitākṣharā on the Treatise on Dharma Sāstra by Yājñavalkya, being a work of Viṣṇūśeṣvara Bhaṭṭāraka the leader of the Ascetics of the blessed Paramahansa order, and the son of the worthy Padmanābha Bhaṭṭa Upādhyāya' 30

the (*apûra*<sup>1</sup>) unseen result (to be known hereafter) to each severally, as it has been said<sup>2</sup>: "An *apûra* generates a result which (individually) "accrues to the actor (alone)"

## Viramitrodaya

## Yājñavalkya Verse 305

- 5 The King should try again causes at law in pursuance of the (rules of) Śîstra when he comes to know that those causes have been wrongly investigated through of feelings of passion, malice, anger etc and the councillors who tried the first cause should be severally punished
- 10 with twice the amount involved in the suit, along with the successful party who got success by the wrong investigation. In some books instead of *prthak*, 'separately', the reading is *damam* 'punishment.' Although as stated before, the punishment for the councillors has been here declared by way of the statement of a rule of punishment for the
- 15 successful party, the first use of the word *tu*, 'however', discriminates a cause honestly investigated by councillors from the one where the councillors become punishable on account of a retrial. By the use a second time of *tu*, 'however', is excluded the punishment of one who has been fraudulently defeated (305)

## Śûlapâṇi

## Yājñavalkya, Verse 305

- 20 When judicial trials held according to law are again investigated with the help of many Brâhmanas versed in the Sâstras, if it is decided in the reverse, the first councillors together with the successful party shall
- 25 each be separately punished by the King. Nârada<sup>3</sup> states a special rule "In the case of those trials which have been tried by the help of witnesses "and councillors and also those which have been defeated on account of

1 According to the Ārya rules about the accrual of responsibility, in addition to the results of one's acts which the actor has to suffer in this world, he also prepares for himself by his thoughts and actions, something which always sticks to him even after he leaves the human body. That is known as अर्था *Apûra* or "that unseen result of virtue and vice, which is a relation superinduced, not before possessed, unseen, but efficacious to connect the consequence with the past and remote cause, and to bring about at a distant period or in another world or birth, the effect."

2 See Jalant III 7-8 (18-20)

The meaning is that in the case of *Apûra* there is no division or distribution of the guilt or its consequences, but that each one is jointly and severally amenable to the entire result.

अपराः • अपरा Relating to, अपरापरिः • relating to the actor

3 Ch. II. 40

his own evidence, there is no re opening of it, nor can there be under the "law a re trial" In the case of those which have failed on account of the witnesses and the councillors by an accusation of the witnesses or councillors, there will not be a judicial trial again, 'defeated by his own evidence' i.e. defeated on account of the mutually contradicting testimony So also 5  
Brhaspati By reason of his running away without filing a reply, as "also by taking resort to the opposite party, one who is defeated, the "plaint of such a one is not admitted, as also of one who has given up "his own statement" (305)

The Author mentions a penalty for one who tries to upset a proceeding decided according to law and justice 10

Yājñavalkya, Verse 306

One who although defeated according to law and justice still thinks 'I am not conquered' such a one coming again (into Court) shall be made to pay double (the amount as) fine, when he is defeated 15

Mitāksharā —He, moreover, who although defeated after a legal procedure, (still) impudently thinks 'I am not defeated', such a one coming again into the court of law by adducing evidence of false documents and the like, after he is again defeated at a legal trial, should be made to pay double the amount of fine 20

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It has also been said by Nārada "If a man is of opinion that "the suit has been decided and punishment declared in a way contrary to justice, he may have the cause tried once more, provided "he should pay twice the amount of the fine inflicted" *Tīrtam* 'decided i.e. by means of the documentary evidence, witnesses, &c 25  
but where the fine was not pronounced *Uddṛita dandam*, 'where the punishment is declared,' i.e. which has been carried to the stage of the declaration of the fine

Again, as for the text of Manu "Whenever a suit has been 'decided, or a fine declared, a wise man should consider it as (finally) 30  
'decided, and must not annul it,' it means that, in cases where a doubt arises as to the legality of a decision on account of the complaint either of the plaintiff or of the defendant, the same may again be judicially tried after having first affirmed him to (pay) a double fine.



and not that even when the cause has been finally decided according to the rules of justice, it should be retried by a king through avarice &c.

Again, if a suit has been decided by another king, and if it be in departure from justice, even such a proceeding should be set right and decided legally after a careful investigation, *vide* the text: "What  
5 "has been decided through ignorance<sup>2</sup> by another king, and in departure from the principles of justice, even that should be made good 'according to law, after weeding out the injustice."

Vīramitrodaya

Yājñavalkya, Verse 306

10 The disputant who out of suspicion as to the honest character of the first investigation regards oneself as not defeated according to law, such a one, when the other side succeeds against him again, the first party should be compelled to pay him as penalty twice the amount  
15 in dispute (306).

Śūlapāṇi

Yājñavalkya, Verse 306

Although defeated by a judicial decision, one who thinks that he is not defeated, such a one after he is defeated again at court shall be compelled  
20 to pay as penalty twice the amount of the former penalty. So says Nārada: "If a man is of opinion that the suit has been decided and punishment declared in a way contrary to justice, he may have the case "tried once more provided he should pay twice the amount inflicted", 'Decided' i.e. completed; 'decision declared' i.e. disposed to by the witnesses.

25 For one who when defeated destroys himself by the poison or the like Bṛhaspati states: "He who destroys himself by poison, hanging, or with weapon, such a one shall after death be besmeared with forces; he does not deserve any rite" (306).

1. The Author of this text is not known. Neither Bālabhāṭṭa nor Viśveśvara mention the name.

2. There is an error in the print of the text at p. 160 l. 8.

For राजा क्षातवृत्तं read राजाक्षतवृत्तं.

3. Ch. I. 65.

The Author indicates the devolution of wealth unjustly recovered as a fine

### Yājñavalkya, Verse 307

What has been obtained, through injustice by the king as a fine, having dedicated it to Varuṇa, he should give it himself to the Vipras (after) increasing it thirty-fold. 5

Mitākṣharā :—That fine which had been levied by the king through injustice out of avarice, should be increased thirty times, and the king should himself give the same to Brāhmanas after mentally dedicating thus, "This to Varuṇa." And as much was taken unjustly in the form of a fine from a party so much should be repaid to him; otherwise there would be the offence of theft; and also as the fine was recovered unjustly, the right of ownership of the first owner remained unaffected 10

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*Vīramītrodaya*

A penalty has been stated to be recovered according to Śāstras; if, however, a penalty not according to Śāstra is caused to be recovered by the king, then the king himself is the offender and he himself should  
5 'pay the penalty; so the Author says

*Yājñavalkya, Verse 307*

*Anyāyena*, 'through injustice', i. e. not in accordance with the Śāstra; *yo danda gṛhitāḥ*, 'the penalty which has been recovered', *taṁ*, 'that', penalty increased thirty-fold *varuṇāya nivedya*, 'having dedicated  
10 to Varuṇa' i. e. *utsryya*, having offered to Varuṇa, himself to the Brāhmaṇas should give, i. e., make over.

Thus ends in the commentary called *Vīramītrodaya* on *Yājñavalkya* the Chapter known as the 'Miscellaneous title of law.'

*Śālistapāṇi*

15 *Yājñavalkya, Verse 307*

The penalty which was unjustly recovered, he should first offer to Varuṇa and afterwards making it three-hundred-fold should himself give to the Brāhmaṇas (307).

Manu<sup>1</sup> states the fruit of holding a judicial trial: "In this  
20 "manner a king bringing to a conclusion all these titles of law, washing  
"away all sins he attains to the highest state." Having observed i. e. having  
investigated, is to be understood. He<sup>2</sup> mentions the fruit for the punisher—  
"Human beings who have committed sins and who have been  
25 "punished by the king, (thus) purified go to heaven like meritorious  
"men. Thus by the guilty being punished and the law purified and  
"established, the king enjoys the fruit thereof along with the subjects.  
"Where the rule of punishment has not been stated by any of the good  
"people, there taking into consideration the place, the time, etc., the  
30 "punishment is to be declared; this is the rule."

Thus in the commentary of *Yājñavalkya* by  
*Śālistapāṇi* ends the Second Book.

1. Ch. VIII. 421.

2. Manu VIII. 319.

A List of Chapters in this Book is being stated.

Chapter	I	On the General Rules of Procedure.
"	II	" Special Rules of Procedure.
"	III	" Recovery of Debts.
"	IV	" The Law of Deposits.
"	V	" Witnesses.
"	VI	" Documents.
"	VII	" Ordeals.
"	VIII	" The Distribution of Dāya.
"	IX	" Boundary Disputes.
"	X	" Disputes between owners and herdsmen.
"	XI	" Sale without Ownership.
"	XII	" Resumption of Gifts.
"	XIII	" Rescission of Purchase.
"	XIV	" Breach of Contract of Service.
"	XV	" Transgression of Compact.
"	XVI	" Non-payment of Wages.
"	XVII	" Gambling and Betting on Animals.
"	XVIII	" Abuse.
"	XIX	" Assault.
"	XX	" Sāhasa or Heinous Offences.
"	XXI	" Non-Delivery after sale.
"	XXII	" Trading by Partnership.
"	XXIII	" Theft.
"	XXIV	" Adultery with Women.
"	XXV	" Miscellaneous : <i>Pratirna</i> .

Thus, in all, there are twenty-five Chapters.

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FINISH.

